

Councils' Accounts: **Your Rights**



Information on the rights to inspect, question and object to your council's accounts

This leaflet explains the right to inspect the accounts of a council or other local government body¹. It also explains the right to ask the Auditor General questions about the accounts of a council, and the right to object to items in the accounts and other audit-related matters. These rights are set out in the Public Audit (Wales) Act 2004², and they are in addition to the rights to request information under the Freedom of Information Act 2000 and other information access legislation.

This leaflet is not a comprehensive explanation of the law, and it is not legal advice. If you need advice on the rights outlined here, you should consider obtaining it from a qualified legal adviser.

In this leaflet, a reference to an 'auditor' is a reference to the Auditor General, a member of staff of the Wales Audit Office working behalf of the Auditor General.

You can find out how to contact the auditor, by telephoning the Wales Audit Office on 029 2032 0500 or e-mailing: info@audit.wales

1 Local government bodies include county councils, county borough councils, national park authorities, police and crime commissioners, fire and rescue authorities, and community councils. For a full list of the types of body covered, please see section 12 of the Public Audit (Wales) Act 2004. For brevity, this leaflet refers mainly to councils. The Accounts and Audit (Wales) Regulations 2014 define larger relevant bodies and smaller relevant bodies and they have different provisions in relation to elector rights. Councils are a larger relevant body and, unless otherwise stated, the rights set out in this leaflet are in respect of larger relevant bodies.

2 With some further details in the Accounts and Audit (Wales) Regulations 2014.

The Auditor General's role

The Auditor General audits most Welsh public sector bodies. The Auditor General is supported in his work by staff of the Wales Audit Office and private firms of accountants.

The Auditor General's audits, assessments and inspections provide:

- reports on the annual accounts of councils;
- reports on whether councils and other Welsh public bodies are providing good value for money;
- feedback to councils to help them to improve; and
- information to those responsible for the scrutiny of policy, and to policymakers, service users and taxpayers.

Issues with councils

While this leaflet summarises the rights to inspect accounts, question the auditor and make objections, it is worth noting that there are various ways to take up issues with a council, and in many circumstances these will be more appropriate than exercising rights in relation to the accounts.

If you think something has gone wrong at your council, it is usually best to contact the council directly. Most councils have their own complaints system, details of which should be available on the council's website, and at its libraries and offices. You can also contact one of the local councillors for where you live (many wards have more than one councillor).

Occasionally, there are problems that someone else needs to deal with. If you think that your council has done something wrong and you are not satisfied with how it has dealt with your complaint, or if you think that a councillor's behaviour has fallen below the high standards that public servants are expected to meet, you should contact the Public Services Ombudsman for Wales.

If you suspect fraud or improper use of the council's money, you should contact the council's internal auditor or the police.

A summary of the rights

The following material summarises the rights to inspect the accounts of a council, to ask the auditor questions about the accounts of a council, and to make objections relating to the accounts. These rights are set out in sections 29 to 32 of the Public Audit (Wales) Act 2004, and further relevant law is provided by the Accounts and Audit (Wales) Regulations 2014.

The rights to inspect and make copies of the statement of accounts and auditor's reports

By 30 September, a council must publish its accounts for the year to 31 March (just gone) and any report on the statement of accounts made by the auditor. If you are a local government elector, you can, at any reasonable time, inspect these documents, and any other report made to the body by the Auditor General, and make copies free of charge.

You can also request that the documents be delivered to you, although the council may charge for copies it delivers. It is a criminal offence for anyone to obstruct these rights of inspection or to fail to deliver any copies requested.

Inspection of documents at audit

The auditor will specify a date from which the rights of electors to ask questions at audit or to make objections at audit are exercisable. An interested person has 20 working days before that date to inspect the accounts to be audited and supporting documents³.

At least 14 days before the commencement of the 20-working day-period, a council must give notice that its accounts will be available for inspection together with all books, deeds, contracts, bills, vouchers and receipts relating to them. As well as being displayed in at least one conspicuous place in the local area, the notice should be published on the council's website. All notices must give the name and address of the council's auditor, and the dates, times and places where interested persons can see and copy the documents, or, in the case of some smaller bodies, details of how to arrange inspection.

It is a good idea to arrange an appointment with the council for any inspection, and for some smaller local government bodies it is necessary to provide 'reasonable notice' (ie, make an appointment at a realistic time). The right to inspect documents under the 2004 Act does not extend to documents that are not relevant to the accounts. It also does not apply to personal information relating to an individual's holding of office or employment or related payments or other benefits.

³ Case law indicates that anyone who has financial or legal interests in a council, such as an elector or taxpayer, is an interested person.

Questions at audit

The council's advert or notice that says the accounts are available for inspection must also set out when electors or their representatives can ask the auditor questions about the accounts being audited.

Questions must be about the accounts for the year being audited; they cannot be about other years. The auditor has discretion as to whether to answer any questions, and the right to ask questions does not extend to questions that are not relevant to the accounts, such as general questions about the council's policies. The auditor does not have to say in response to a question whether he or she thinks something the council has done, or an item in its accounts, is unlawful.

Before you ask the auditor any questions, you should inspect the accounts so that you know what they contain. The purpose of the opportunity to raise questions is to enable electors and their representatives to clarify points of doubt and misunderstanding in relation to the accounts.

If you do ask questions that are not about the accounts, the auditor may suggest that you ask the council for the information you want. It is not the auditor's role to act as a 'postbox' for questions to, and replies from, your council.

The right to make objections at audit

If you are an elector of the council, or are an authorised representative of someone who is, you may make objections before the auditor on the grounds that:

- a. an item of account is unlawful; and/or
- b. there is a matter relevant to the audit that the auditor has the power to tell the public about in a 'public interest report'.

An item in the accounts is unlawful if it records, for example:

- spending, investment or income for which the council had no authority, such as where a council spent money on purpose that it had no power or duty to undertake;
- spending without due authorisation;
- spending or income following an unlawful decision, such as where the councillors taking the decision stood to benefit directly;
- spending on a lawful purpose, but at such high level that it was unlawful because of irrationality; or
- spending or income taken from, or added to, the wrong fund or account.

If an auditor considers an item to be unlawful, he or she may apply to the courts seeking a declaration that the item in the accounts is unlawful. If the court agrees, it may order that the accounts are put right. In reaching a decision whether to apply to the courts, the auditor will take account of a number of factors, including cost.

A valid objection cannot be made on any other grounds than those at (a) and (b) above. Also, a valid objection needs to be made on or after the date specified by the auditor from which the rights to ask questions at audit and make objection at audit are exercisable, and be in relation to the accounts for the year being audited. If you are thinking about whether to object, you should bear in mind that councils have the discretion to decide what they think is the best way to do things. Strong disagreement with something a council has done is not in itself valid grounds for objection.

If an elector, or their representative, wishes to make an objection, they must write to the auditor so as to give notice of the proposed objection. Such a notice must tell the auditor the grounds of the objection. The notice should include, as far as possible, details of any item of account that is alleged to be contrary to law, and/or details of any matter on which it is proposed that the auditor could make a public interest report. The elector or their representative must copy the notice to the council at the same time as sending it to the auditor. It is usually appropriate to send the copy of the notice for the attention of the Chief Executive, or, in the case of a community council, the Clerk.

The auditor must reach a decision on any objection. If the auditor decides not to seek a declaration from the courts after receiving an objection that an item of account is unlawful, and that objection is made in accordance with the legislation, the elector or their representative may request that the auditor provides them with a statement of reasons for that decision within 14 days of receiving of the decision. If the elector or their representative is not happy with the decision, he or she can appeal to the courts within 28 days of receiving the statement of reasons.

If an objection is about a matter relevant to the audit that the auditor has the power to tell the public about in a public interest report, again, the auditor must decide whether to take any action. The auditor will normally, but does not have to, give reasons for his or her decision on such objections, and there is no right of appeal in the 2004 Act to the courts against such a decision.

What else you can do

At any time, you can give the auditor information that is relevant to his or her responsibilities. For example, you can simply tell the auditor if you think that something is wrong with the accounts or about waste and inefficiency in the way the council runs its services. You do not have to follow any set time limits or procedures in order to share such information. The auditor will usually let you know the general outcome of any work undertaken in response to the information provided, and will try to provide a helpful response, but there is no statutory obligation to undertake work in relation to such correspondence or to report to correspondents. For further information please see the leaflet Writing to the Auditor General for Wales or the Wales Audit Office – A guide for correspondents on our website.

Costs

Councils, and ultimately taxpayers, must meet the costs of dealing with questions and objections. Auditors will consider valid objections and will consider a range of factors in deciding how to deal with them. They must take into account the costs that will be involved. They will only continue to deal with an objection if, in their judgement, it is reasonable to do so. If you appeal to the courts, you may have to pay for the action yourself.

Reasonable adjustments in respect of impairment (disability)

We encourage people with impairment (disability) who require reasonable adjustments to let us know what those adjustments are. A reasonable adjustment may mean, for example, providing information in large font or in audio form in order to address visual impairment. We will provide further details on request.

Useful contact details

The Auditor General for Wales
1 Capital Quarter
Tyndall Street
Cardiff
CF10 4BZ

Tel: 029 2032 0500
E-mail: info@audit.wales
Fax: 029 2032 0600

www.audit.wales

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 0300 790 0203
E-mail: ask@ombudsman-wales.org.uk
Fax: 01656 641199

www.ombudsman-wales.org.uk

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545745
Fax: 01625 524510

www.ico.org.uk

This document is also available in Welsh. We welcome correspondence and telephone calls in Welsh and English.

You can also write to us in either Welsh or English and we will respond in the language you have used. Corresponding in Welsh will not lead to a delay.



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Tyndall Street
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Rydym yn croesawu gohebiaeth a
galwadau ffôn yn Gymraeg a Saesneg.