

CONFIDENTIAL

**REPORT FOR SCARBOROUGH BOROUGH
COUNCIL OF THE INVESTIGATION INTO THE
MANAGEMENT OF THE COUNCIL'S COASTAL
PROTECTION SCHEMES**

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SECTION 1: INTRODUCTION

1.1 This report is in four sections:

Section 1: An Introduction in which I set out some preliminary points about the background and the conduct of my Investigation

Section 2: An outline of the main issues that I have investigated and an assessment of the involvement of individual officers in those issues

Section 3: Conclusions

Section 4: Recommendations

1.2 In December 2004 the Audit Commission published a report 'in the public interest' under Section 8 of the Audit Commission Act 1998. The report dealt with what were described as 'significant shortcomings' in the way Scarborough Borough Council had managed several coastal protection schemes and in the view of the Council's external auditor that the Council had failed to protect the interests of local and national taxpayers.

1.3 In March 2005 the Council commissioned the Employers Organisation for Local Government to undertake an investigation into the issues raised in the Public Interest Report and I was appointed as Independent Investigator (my qualifications are set out in Appendix 1) with the following terms of reference:

- to consider concerns arising from the Audit Commission Report on the Council's Coastal Protection Schemes and investigate the role and involvement of Senior Managers and advise whether any individual should be the subject of a disciplinary investigation.
- to report to the Council's Appointments Committee to establish whether or not there is a prima facie case of misconduct and/or incapability, in which case the matter will proceed to Stage 2 of the Model Disciplinary Procedure.
- to act as Advocate on behalf of the Council to the Appointments Committee and to call witnesses in accordance with the Model Procedure for dealing with disciplinary hearings.
- At all times during the preliminary investigation, and in the event that the matter proceeds to Stage 2 of the Model Disciplinary Procedure, the principles of natural justice and good management shall be followed and have regard to the Model Procedure specified in the JNC Conditions of Service for Chief Officers and to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures.

- 1.4 Following an initial meeting with the Appointments Committee at the end of March 2005 I began my Investigation in April 2005 with a commitment to finalise my report for the Appointments Committee by the end of May/beginning of June 2005.
- 1.5 I was provided with and read the relevant background documentation and then undertook a series of face-to-face meetings in May 2005 with a number of Council officers and elected members who had been advised by the Head of Human Resources about my Investigation and my request to meet with them. A copy of the letter sent to those that I proposed to meet is attached as Appendix 2. A list of those that I met with during my Investigation is attached as Appendix 2. I also received written submissions from the Capital, Strategy and Procurement Manager and Engineering Services and the former Director of Technical Services with Scarborough Borough Council. The former Director of Corporate Services and S151 Officer with Scarborough Borough Council and the Council's external auditor (and author of the Public Interest Report) declined to meet with me (although subsequently both sent written comments about my Investigation) and I had written correspondence with Councillor Watson, a member of the Council's Independent Group.
- 1.6 I would like to place on record that I had full cooperation with my Investigation from those current and former members of staff who met with me as well as from those elected members that I interviewed and I am confident that I have been given access to the relevant documentation and other evidence that was necessary to allow me to reach my conclusions. I relied heavily on the Public Interest Report and associated documentation to provide the background to my Investigation. I would also like to place on record my appreciation of the support given to me during my Investigation by the Head of Human Resources, and his team and the Council's Monitoring Officer, who ensured that I had all the additional documentation that was necessary to conduct my Investigation.

SECTION 2: THE ISSUES

- 2.1 The Audit Commission's Public Interest Report published in examined in detail the management of the Castle Headland Cliff Stabilisation scheme as well as other coastal protection work carried out by Scarborough Borough Council since 1997. It concentrated on the procurement of consultancy support for this scheme and the role of key Council officers in this process.
- 2.2 Work on the Castle Headland Cliff Stabilisation scheme started in March 2002 and involved major civil engineering work to improve 2.1 km of sea defences along Marine Drive in Scarborough. Approved spending for the scheme started at £28.6 million but the contractor has claimed over £4 million representing a major increase in costs. The construction contract was awarded after competition and the tender price was fixed on the basis of a specification prepared by the Council's consultants, High Point Rendell (HPR). The contract price increased following variations in the construction work relating to the identification of different ground conditions to those assumed by HPR.
- 2.3 HPR decided that a detailed survey of the site was not required. The Public Interest Report concedes that this would have been expensive and may not have provided sufficient detail to eliminate design and cost uncertainties but suggest that it may have resulted in more reliable financial forecasts. Officers did report to members on the detailed conclusions reached by HPR but neither members nor DEFRA were made aware of the potential implications of not undertaking a detailed ground survey.
- 2.4 The initial estimate for supervision costs by HPR was £1.2 million but this doubled to £2.4 million. The payments made to HPR reflect the time spent on supervision and the increase in costs is substantially due to the extension of the contract period by 12 months.
- 2.5 It was the realisation that expenditure on the Castle Headland Cliff Stabilisation scheme far exceeded the initial budget provision that prompted the initial work by the external auditor working with Internal Audit. Comments by the external auditor in the Annual Letter for 2002/03 prompted the Council to ask its specialist construction lawyers Watson Burton to review aspects of the scheme. The reasons for the increase in the construction costs were corroborated by Watson Burton.
- 2.6 However, while Watson Burton assured the Council in respect of the increased construction costs the external auditor concluded that the governance arrangements in respect of the appointment by the Council of HPR fell far short of the standards the public have a right to expect. HPR was awarded the supervision contract without any competition and in the external auditor's view proper practices were not used in acquiring the services of HPR because procurement regulations and the requirements of the Council's own Constitution were not followed.

- 2.7 These inadequate arrangements in awarding the key function of adviser/supervisor for the work involved in the Castle Headland Cliff Stabilisation scheme made it difficult to assess whether the Council had overpaid for the work carried out and the Council was unable to demonstrate through market competition value for money in using its resources for this work.
- 2.8 In the view of the external auditor the adequacy of the appointment process, the specification and the terms agreed with HPR were not sufficiently robust to protect the interests of the Council and local and national taxpayers. He contended that the ‘best value exercise’ prepared by the Capital, Strategy and Procurement Manager was ‘bogus’ in justifying the award of the contract to HPR. Procurement regulations were not complied with and in his view the appointment of HPR was unfair and unlawful. The external auditor also claimed that the Council failed to secure best value in dealing with HPR as subsequent advice obtained by the Council suggests that payment terms transferred to the taxpayer the risks involved in delays in supervising complex engineering work. The failure to enter into a lawful and fair contractual relationship with HPR, in the view of the external auditor, exposed the Council to the unnecessary risk of financial loss and poor value for money.
- 2.9 The task set for me by the Terms of Reference for the Preliminary Investigation was clear – investigate the role and involvement of Senior Managers and advise whether any individual should be the subject of a disciplinary investigation. The Public Interest Report had focused on the involvement of four Council officers – the Director of Technical Services, the Council’s Monitoring Officer, the Council’s Section 151 Officer and the Capital, Strategy and Procurement Manager. What follows is a summary of my assessment of the role of individual Council officers based on the contents of the Public Interest Report and other background documentation supplemented by information that emerged from the interviews undertaken during my Investigation.

2.10 Role of individual officers

1. The (former) Director of Technical Services

Until he left the Council's employment in August 2003 for another similar post with a local authority on the south coast he was the Director responsible for coastal protection schemes, relying on the advice of specialist support officers including those working in the Capital Strategy and Procurement Unit. As project manager for the Castle Headland scheme the Capital, Strategy and Procurement Manager reported direct to the Director until August 2003 and then to the Chief Executive. Members of the Council rightly had an expectation that the Director and indeed the Council's senior management generally would have satisfied themselves about the quality and completeness of reports issued in their names and to have taken action if they were aware of any activity that was potentially unlawful. The Capital, Strategy and Procurement Manager claimed that in late 2001 the Director knew of the intention to roll forward the HPR contract but that he did not instruct him to put the work out to competition. The Director claimed that he did not know about the competition requirements as he had no experience of working within the relevant regulations and the matter had not been brought to his attention by the Capital, Strategy and Procurement Manager on whom he was relying. The external auditor examined the reports used by Members as the basis of decisions about coastal protection schemes and concluded that the reports did not adequately clarify the risks associated with proposed action and that there were examples of reports:

- That contained information that could be misleading
- That did not contain sufficient information on the supervision element of projects

The Director in his report to the Cabinet on 22 February 2002 detailed the outcome of the tendering exercise for the construction element of the Castle Headland scheme. This report followed the pattern of earlier reports in giving detailed information about the construction element but very little about the supervision elements of the scheme. Based on this the Cabinet agreed both to accept the tender of Nuttall at £25.7 million and to engage HPR at a cost of £1.2 million to supervise the work. The report advises that EU Contract Procedure was followed but does not clarify that this applied only to the Nuttall contract and not to the HPR contract. The information in the report clearly was incomplete and misleading and Members should have been better advised by their officers.

I invited the former Director to meet with me to discuss his involvement in the Castle Headland scheme. He declined to meet with me but did provide me with an 18 page written response (plus appendices) dated 9 May 2005. In a section of this response headed 'General Overview and Recommendations' he makes the following observations:

- *“From a risk management perspective the funding regime gave corporate funding advantages and this may have led to an oversight of essential procedures by the project Manager (the Capital, Strategy and Procurement Manager) and Corporate Services Officers*
- *Officers worked diligently in my view and often worked speedily to secure national funding which would otherwise have been returned to the Treasury*
- *Officials from DEFRA ‘s regional and national offices encouraged officers to make all haste with the arrangements*
- *I have nothing but the greatest respect for (the Capital, Strategy and Procurement Manager) as a professional, he is a first class officer and his hard work will leave a legacy on the North Yorkshire coast for years to come.*
- *I remain disappointed that the draft public interest report does not seek to balance the scale of risks faced by Scarborough Council and the level of community support and appreciation for the work which has been undertaken.*
- *The scale of the work undertaken stretched the capacity of the Council at a difficult time for the organisation.*
- *Whilst (the Capital, Strategy and Procurement Manager) was adequately resourced the Corporate Services Directorate did not seem to have the capacity to give the level of support he needed despite adequate notice.*
- *The report of 18 December 1998 to the Policy Resources Committee prepared by the Chief Executive, Director of Corporate Services and the Director of Technical Services as evidence that schemes of this nature were not sprung on the Corporate Support services without due notice*

The former Director makes a number of recommendations about the procurement process for coastal protection schemes. He also refers to the shortcomings in the contract arrangements for coastal protection work and claims that this was only drawn to his attention on one (unspecified) occasion and that he took action by requesting the officers involved (again not specified) to work together to resolve the situation, relying on their integrity to complete the task.

He concludes his submission by stating that during his tenure as Director of Technical Services he created additional resources in a context of declining budgets to ensure that the Capital, Strategy and Procurement Manager had the capacity to undertake capital works and that he did not ask for any additional support. He said that he relied on the Capital, Strategy and Procurement Manager’s expertise to manage the work based on

his track record and competence. He believes that he followed the Council's constitution and Contract Standing Orders in the letting of contracts and was not advised of any difficulties until some time after he left the Council's employment.

2. The former Monitoring Officer (and Head of Legal Services)

Significant expenditure was incurred on the coastal defence works managed by Scarborough Borough Council. It was important to ensure that appropriate legal advice was in place to ensure that potential risks were mitigated. It is clear that there was inadequate legal input into the contractual and tendering arrangements entered into by the Council. In particular:

- Legal advice on the proposed award of supervision work was not sought by the Capital, Strategy and Procurement Manager
- Where the values for supervision work were not specified so the Monitoring Officer did not identify transactions where legal advice would be needed as required by the Council's Contract Procedure Rules, and

as a result, work to the value of almost £5 million was awarded without a signed and sealed contract as required by the Council's Constitution.

The Council's Monitoring Officer had a duty to report on any proposal, decision or omission that appears to him/her to give rise to, or to be likely to give rise to a contravention of any enactment, rule of law or code of practice. It is clear from the external auditor's investigation that at some point the Capital, Strategy and Procurement Manager was aware of the failure to comply with EC procurement relating to the HPR supervision work but that the Council's legal staff were not, although both the Monitoring Officer and the Council's Contract Lawyer have indicated that they were aware of the failure to comply with Contract Procedure rules. On the 1 August 2002 the Contracts Lawyer wrote to the Director of Technical Services and the Monitoring Officer about her concerns about what she described as:

'serious breaches of the Council's Contract procedure'

citing three examples of such breaches, and referring to:

'the problems which are currently being created by the Procurement Unit for the Council. There still seems to be a fundamental lack of understanding in the Procurement Unit as to the seriousness of this method of dealing with contracts (meaning without any input from the Council's legal team) which I find surprising since clearly there are now major issues with the Coast protection works.'

It is clear that both the Director of Corporate Services and the Capital, Strategy and Procurement Manager saw this email. The Contracts Lawyer had concluded it with the following advice:

'...the Procurement Unit needs to be made aware as a matter of urgency just what a serious problem it is for the Council to be placed in a position where it is in breach of its own constitution and acting ultra vires..... Under the circumstances the Head of Legal Services has no choice but to deal with this matter in his formal capacity as Monitoring Officer'.

I can find no clear evidence that any Council officer took any action as a consequence of this email. The Council's Contract Lawyer told me that she was satisfied that she had discharged her responsibility by formally raising it with the Director of Technical Services and the Council's Monitoring Officer. She also knew that the Director of Corporate Services (the S151 Officer and the line manager of the Monitoring Officer) had seen the email and her views on the issue as on 13 August 2002 he had handwritten a comment on a copy of the email saying:

'Excellent email. Please keep me informed. I will take it up as necessary'.

It is clear that no action was taken by anyone to review the tendering arrangements and that no report to Members was issued. The Council's Monitoring Officer should have been more proactive and should have exercised his duty to investigate the possible legal consequences of the failure to observe the Council's own procedures. Had he done so it is likely that he would have also identified the way in which work had been unlawfully and unfairly awarded to HPR. He should then have acted robustly to safeguard the Council's interests and assessing what corrective action was appropriate, including the exercise of his duty to report to Members.

The former Head of Legal Services and Monitoring Officer accepted my invitation to meet with me to discuss his involvement in the Castle Headland scheme and he also provided an 8 page written submission. He provided some useful contextual information about the way in which he had been appointed as Head of Legal Services and Monitoring Officer in 2002, the challenge in 'getting to grips' with these new responsibilities and the demanding nature of the work. He also referred to the under-resourcing of the legal function that in his view meant that there was insufficient capacity to manage to volume and complexity of the work

He responded to a number of relevant matters as follows:

- He had regularly raised issues about compliance with the Council's Constitution generally and Contract Procedure Rules specifically at meetings of the Corporate Officers Group (COG). His concerns were normally "met with groans" from his COG colleagues and he was sometimes accused of being 'pedantic' in his insistence that constitutional requirements were complied with. In 2003 he requested that the Finance/Legal/ICT Overview and Scrutiny Committee looked at the issue of procurement with a view to revising the Contract Procedure Rules.

- He was shocked and angry at the contents of the Public Interest Report and its focus on the HPR supervision contract. The Finance/Legal/ICT Overview and Scrutiny Committee had already had a report from the Head of the North Yorkshire Internal Audit Consortium in July 2004 and the Audit Commission had also flagged up concerns in its Annual Letter about the 2002/2003 Audit of Accounts.
- It is clear to him that the contract with HPR had in effect been awarded by the Procurement Unit on 8 March 2002, long before Legal Services became involved in the matter and five months before the Contracts Lawyer sent her email of 1 August 2002 from the Council's Contracts Lawyer to himself and the Director of Technical Services.
- That email was designed to register the concerns by Legal Services about the 'silo mentality' of the Procurement Unit with Legal Services not being properly involved in contractual arrangements. It followed a series of emails and discussions about this between the Contracts Lawyer and the Head of the Procurement Unit. It was about problems with the works contract for the Castle Headland Scheme along with concerns about other coastal protection work contracts – which is why Watson Burton were brought in to review the situation. It was not about the HPR contract and the failure to comply with EC Regulations, not least because the author of the email was not at that time aware of this.
- The first he knew of the failure to comply with EC Regulations was when the Audit Commission Relationship Manager raised it with him when the Public Interest Report was being drafted. He was “*utterly shocked*” about this as he knew full well that the EC regulations applied but had assumed that they had been complied with.
- Nearly three years on from the email of 1 August 2002 he has great difficulty in recalling what response resulted. He was not involved in the HPR contract and had been shocked to be implicated in the Public Interest Report. He had raised concerns at a meeting of COG but on any such occasion the Chief Executive's response had been to say something like :

“we have to move on – please discuss this with the Director of Technical Services”

- . Paragraph 53 of the Public Interest Report stated that the Monitoring Officer:

‘could have acted more robustly to safeguard the Council's interests by seeking further information and assessing whether corrective action was possible’.

His view is that it is difficult to see what could have been done to change anything without risking a breach of contract claim from the appointed contractor who was already performing the contract and being paid in accordance with the agreed rates. The Report criticises him but does not suggest what corrective action might have been appropriate or possible in the circumstances. He also disagrees with the statement that he should have exercised his reporting duty to Members – his contention is that there was nothing at that time to indicate that there had been a failure to properly tender the HPR work. He pointed out that Paragraph 47 of the Public Interest report says that the Report on the Castle Headland scheme by the Director of Technical Services to the Cabinet of 22 February 2002:

‘ suggests that EU Contract procedure was followed’.

- In conclusion he said that he takes serious issue with the statement in the Public Interest Report that:

‘ other key officers, despite being made aware of these deficiencies (referring to the management of the scheme ignoring or disregarding procurement regulations and the Council’s constitution) failed to discharge fully their statutory responsibilities.

He strongly denies this in his case, claiming that he was not personally made aware of any failure to comply with the EU procurement directives.

3. The former Section 151 Officer (and Director of Corporate Services)

As the Council’s Section 151 Officer, the Director of Corporate Services until earlier this year had responsibility for the administration of the Council’s financial affairs. He was also the line manager of the Council’s Monitoring Officer. As S151 Officer he was required by Section 114 of the Local Government Finance Act 1998 to report to the Council if a decision had been made that involved or would involve incurring unlawful expenditure, has taken or is about to take a course of action that would be unlawful and likely to cause a loss or deficiency on the part of the Council or is about to enter an item of account that is unlawful. The Director of Corporate Services was alerted to the failure of the Council to comply with its Contract Procedure rules when he saw the email of 1 August 2002 from the Contracts Lawyer to the Director of Technical Services and the Monitoring Officer. Additionally, by October of 2002 a major potential overspend of over £18 million had been reported to the Cabinet but no action was taken by the Director of Corporate Services to report to Members as required or to challenge the management of the Castle Headland scheme.

This was to ignore the possibility of the Council losing significant levels of Government grant by not properly following the appropriate terms and conditions. The external auditor concluded that the Director of Corporate Services should have been far more thorough and should have sought assurance about the possible financial consequences before the coastal protection schemes generally were allowed to proceed. Specifically, when he became aware in August 2002 that there were serious issues of concern in respect of the award of work to HPR he should have acted more robustly to safeguard the Council's interests by seeking further information and assessing whether corrective action was possible and also by exercising his duty to report to Members.

He declined the invitation to meet with me to discuss his involvement in the Castle Headland scheme. He advised the Head of Human Resources in a letter dated 9 May 2005 that he was a 'previous' employee, that he was considering preparing a statement but would be taking advice from his Union before 'putting pen to paper'. He concluded his letter by stating that:

'I would have thought that my track record over the last thirty years at Scarborough Council would have spoken for itself.'

He has subsequently sent me a letter dated 14 June 2005 in which he states:

'in my 43 years in local government I have never received a qualified audit opinion. The 2003/04 Annual Audit and Inspection letter states that the Council has arrangements to ensure its financial standing is soundly based.

S114 of the Local government Finance Act 1998 sets out duties relating to the reporting of unlawful expenditure which were likely to cause a loss or deficiency to the Council. Although not following EU procurement rules is unlawful it is not unlawful to pay the contractor for works done. In the case of reporting upon the breach of EU rules, when I became aware, the contractor was already engaged. As DEFRA was happy to work with the contractor and was issuing grant and borrowing approvals for the supervisory work it was most unlikely that there would have been a loss or deficiency to the Council from this source. However, to have publicised the breach could have led to claims for damages from other similar contractors. In the circumstances there seemed more to be gained from not publicising the breach than there would have been from reporting upon it.

A possible breach of the Contract procedure Rules (but not EU rules) came to my attention in August 2002 following receipt of an email from the Legal Unit. I asked to be kept informed of further developments. Subsequently the issues were discussed by me informally with the Council's Monitoring Officer. As contracts and Contract Procedure Rules are usually matters for solicitors rather than accountants, it was agreed with the Monitoring Officer to request Watson Burton Solicitors to look into the supervision contract on behalf of the Council. This gave the benefit of an independent assessment of the supervisory aspects while ensuring there would be no claim for damages.

The overspend of the scheme by £18.6 million was reported to cabinet in October 2002. Following a discussion of the report at Corporate Officers group I ensured that members were being made aware of the overspend. A funding profile was shown followed by the words 'clearly this increase is significant and Members will be concerned at the potential demands this could have on the Council's revenue and capital expenditure'. In addition there were regular(five reports between 18 February 2003 and 28 September 2004) capital monitoring reports to members showing the profile and funding for the scheme. The scheme was dealt with in exactly the same way as any other capital scheme as the same procedures were adopted. It must be remembered however that the issues in the auditors' report relate only to the supervisory work and not the main contract.

The Auditors have made 'judgements' which I feel are seriously flawed. Presumably their first judgement at paragraph 57 relates to the earlier schemes mentioned in the report. The S151 Officer changed in 1997. For the subsequent schemes the S151 Officer was not aware of any problems. Presumably the auditors were also unaware as there was no mention in the various Annual audit and Inspection Letters from 1997 onwards of any perceived procurement problems. In fact, even in the letter for 2002/03 the Auditors state "The Council has arrangements in place for ensuring the legality of its transactions although arrangements to ensure EU tendering rules are followed need to be improved". The Letter goes on to say "Working with internal Audit we assessed the tendering arrangements for the main contract and adviser". Why were breaches in compliance not reported upon at this time?

The financial consequences of all coast protection schemes are assessed by the Capital Monitoring Working Group before inclusion in the capital programme. No scheme is able to begin unless the various grant approvals are in place – mainly from DEFRA. Approvals were received from DEFRA before the scheme went ahead and monitoring then took place to ensure payments did not exceed approvals.

The second judgement relates to the safeguarding of the Council's interests. The tender had already been let when I became aware of the breaches to EU rules or Contract Procedure Rules, so there was no corrective action that could have been taken. The Council's interests were being safeguarded by not drawing attention of the breach to other contractors. The likelihood of DEFRA withdrawing grant was felt to be remote (a view shared by the Auditors) as supervision of the contract was necessary, HPR were well known in coast protection circles and had been approved by the Department. In fact, in early discussion with the Auditors, publicity of the breach was a consideration, in the decision to issue a Public Interest Report, as they felt there could be a detrimental effect on the Council. Regular reports on the financing of the scheme were made.

In contract and many other matters the S151 Officer relies upon the Internal Audit Unit to alert him to problem areas. No such reports were made relating to the earlier schemes. With respect to the Castle Holms scheme a report was made by Internal Audit but not until March 2004 which stated – “HPR were awarded the contract following a best value evaluation and a report to elected members for the commission on the basis that they held extensive local knowledge and involvement in the design/detailing and proven expertise in the required field.....those grounds are valid for waiving of the procurement rules of the Borough Council”. The report goes on to say “we are concerned that SBC may be both in breach of EU Procurement Directives and the DEFRA Conditions of Grant. Although possible, we consider it unlikely that this will lead to the withdrawal of DEFRA support and/or loss of funding”.

I think this shows how open to interpretation the Council’s contract procedure rules were and these have now been significantly amended and improved. It is also a further indication that the withholding of grant by DEFRA is remote and so there was little or no risk to council taxpayers.

Auditors always have the benefit of hindsight without the pressures of time constraints. This is a wonderful situation to be in. They are reviewing documentation that someone else has produced and not only that, but in reviewing have access to a whole technical back-up team and the luxury of dealing with one issue at a time.

In contrast when the Castle Holms contracts were being let senior Council officers were also involved in the Council house stock transfer, CPA, Local Government Review, the North Bay Project etc etc. These, as well as the day jobs, left very little in the way of back-up resources yet with all the pressure to get the jobs done. In my own case I was project managing the very complex housing stock transfer as well as being involved in the other major projects. All of these had successful outcomes.

He concluded his letter to me by saying:

I hope that the above comments are useful and place some of the allegations in context. The auditors’ report gives a view of ‘what’ happened and judgements are based upon this view. However, the judgements do not take account of ‘why’ things happened. In my view if the report had taken these into account it would have been more balanced and complied more closely with the Code of Audit Practice.

Whilst much of this letter is perhaps over-defensive with a considerable amount of post-hoc rationalisation, pointing to the shortcomings of the Council’s external auditors, it does serve to demonstrate that there was a lot of confusion about the problems with contracts generally and in particular there was a failure to distinguish clearly enough between the main contract and the supervision contract.

4. The Capital, Strategy and Procurement Manager (now the Head of Engineering and Procurement Service)

As Head of the Procurement Unit and the project manager for the Castle Headland scheme the Capital, Strategy and Procurement Manager reported direct to the Director of Technical Services until August 2003 and then to the Chief Executive. The Capital, Strategy and Procurement Manager wrote to HPR on 20 November 2001 as follows:

'In order to formally engage you for the next stage of the scheme it will be necessary for you to provide a fully costed and detailed proposal. This will clearly need to demonstrate competitiveness and indeed any preferential terms you propose to offer to the Council given the likelihood that it will not be subject to a separate tender process.'

'In the spirit of partnership I would therefore be pleased to receive from you your fee proposal to include a breakdown of staff to be employed, hourly rates, details relating to overhead/profit.'

HPR sent a draft copy of their proposed fee charges to the Council around mid January 2002 and set out a fee-charging scale that was mainly on a variable basis depending on HPR's time input to the scheme. The terms of HPR's work were accepted by the Capital, Strategy and Procurement Manager and after receipt of funding confirmation from DEFRA in March 2002 the Capital, Strategy and Procurement Manager wrote to HPR without seeking legal advice or Council approval saying:

'I confirm my approval, in principle, to your proposals and on the basis of the details included would authorise you to proceed to set up the site supervision team.'

The external auditor concluded in his Public Interest Report that the approach adopted by the Capital, Strategy and Procurement Manager was 'reactive'. He did not routinely involve legal staff unless the Head of Legal Services (the Council's Monitoring Officer) challenged or requested information as part of his scrutiny of Cabinet or Chief officer Group reports. As many of the reports to Members about HPR omitted any detail about the procurement method and the contract value it was difficult for the Monitoring Officer to exercise his responsibilities.

The Council's Contracts Lawyer wrote to the Capital, Strategy and Procurement Manager on 25 February 2002 requesting sight of the substantial contract she had seen referred to in the local press. After this request and on the same day (8 March 2002) as sending the letter of intent to HPR the Capital, Strategy and Procurement Manager provided details to the Contracts Lawyer. The Council's Contract Procedure rules (34.1b) require contracts of £25,000 or more to be approved by the Monitoring Officer. In this case this was not possible before the commencement of the work as the plans had progressed too far.

The Contracts Lawyer responded on 19 March 2002 identifying the following issues:

- The variable nature of the fee for HPR
- The failure to adhere to the Council's Contract Procedure Rules, and
- The commencement of work before the contract had been agreed

The email of 1 August 2002 from the Contracts Lawyer to the Monitoring Officer and the Director of Technical Services inter alia pointed out the absence of any limit on the cost to the Council given the charge rate applied. Despite this (and previous correspondence) the Capital, Strategy and Procurement Manager subsequently agreed an increase in fees in November 2002 for supervision of the 'compensation events' referred to in claims to vary scheme costs received from Nuttall.

The Council's construction lawyers (Watson Burton) described the terms as follows:

- *All the risk of additional cost is allocated to Scarborough Borough Council, there is no risk sharing in this arrangement*
- *The rates used are very confusing with figures given both hourly and monthly, monthly are much more expensive than hourly rates*
- *There is no incentive on HPR to find added value, to control their costs expenditure or to act in a prudent way. In effect they have been handed a blank cheque to charge (the Council) every element of cost, however inefficient, duplicated, wasteful or unproductive*

The external auditor noted in his Public Interest Report that most of the major schemes carried out by the Council had cost more than the original predicted for both construction and supervision work. He also noted that both the Capital, Strategy and Procurement Manager and HPR were aware of the potential working practices that could be employed by each potential contractor as references had been obtained to inform the bid evaluation process and that this contextual information indicated that paying HPR's costs on an input basis was likely to lead to fee escalation. Following advice from Watson Burton in October 2002 new terms were added but it was not until January 2004 that draft contractual terms were sent to HPR. Two reasons were given for the delay:

- HPR had been engaged since March 2002 and paid at the rates in the Capital, Strategy and Procurement Manager's letter of intent. Watson Burton indicated that it would not be practical to make significant changes to the terms. Finalising the contract was not given priority by the Council's 'stretched' legal team

and

- there were difficulties in finalising contract arbitration arrangements.

Only very recently has a signed contract been obtained from HPR as required by the Council's Contract Procedure Rules. The fact is that the Council's processes for engaging HPR were seriously deficient and despite internal and external advice about the need to strengthen the contract the Council was slow to respond and secure a renegotiated contract.

The external auditor was particularly critical in his Public Interest Report about the 'best value' evaluation of HPR conducted by the Capital, Strategy and Procurement Manager in justification of the awarding of the work to the company. The summary report of this evaluation was sent to DEFRA with the main conclusion that HPR's involvement in setting up and designing the Castle Headland scheme meant it was logical for HPR to continue their involvement and supervise the construction work on the scheme. In the view of the external auditor this exercise was undertaken retrospectively to justify the decision to award work to HPR rather than appraise options or seriously challenge HPR's approach as:

- No advice was sought or taken from the Council's legal or finance staff
- The only comparison made in the evaluation was with hypothetical competitors
- The technical evaluation was based on the CIRIA model that is designed for evaluating competitive quotes
- HPR helped produce the evaluation
- Potential comparator organisations in the Council's approved tender list were ignored

In the summary report of the evaluation the Capital, Strategy and Procurement Manager indicates that he was aware at that time of the EC procurement requirements when he states:

'It is expedient to engage HPR in accordance with the proposal notwithstanding that the value exceeds thresholds set by European Directives'

Historically the Council had tendered for an initial study or 'scoping' exercise for coastal protection work schemes, often involving less than £50,000. The value of the supervision work tended to increase significantly as the work progressed. Contracts for this type of work have been let on a piecemeal basis usually after funding has been agreed by MAFF/DEFRA. As the contracts were let on this basis each in fact required compliance with EC procurement Directives, the Council's Constitution and appropriate grant terms. The Capital, Strategy and Procurement Manager (who was responsible for all aspects including setting up and managing the schemes on behalf of the Council) claimed that he was not aware at the time of the EC procurement threshold.

A number of HPR schemes exceeded EC procurement thresholds and should have been advertised in the OJEC. The work was therefore awarded unlawfully. In addition, the Council's Contract Procedure Rules require a contract to be reviewed and signed by authorised Council officers. There was no contract documentation for six HPR schemes with a value of over £2 million and the Head of Legal Services did not review the payment terms so the requirements of the Council 's Contract Procedure rules were not met.

In summary the Council, not for the first time, failed to follow EC procurement requirements and its own constitution in respect of the Castle Headland scheme. Having carried out an inadequate and post hoc best value evaluation exercise it risked losing grant and loan support towards the cost of HPR's supervision work on this major scheme. The external auditor's view is that because work was awarded unfairly and unlawfully to HPR the Council failed to adequately manage the fundamental and substantial financial risk present in the Castle Headland project.

The Capital, Strategy and Procurement Manager met with me to discuss his involvement in the Castle Headland scheme. In advance of our meeting he provided me with a written account of his involvement supported by a portfolio of related documentation. Much of this is a detailed account of the way in which contracts for coastal defence work were secured and managed. This was covered comprehensively in the Public Interest Report but the Capital, Strategy and Procurement Manager both in his written submission and in his interview with me made some relevant points about the way the Borough Council operated at that time:

- All reports for member consideration were taken to COG for scrutiny and comment, with any subsequent amendments being made prior to consideration by members. The Director of Technical Services was fully involved in this process and was the signatory to all such reports from officers in his Directorate.
- A good example of this was the Castle Headland scheme where the Director was deeply involved and took a personal interest throughout the project
- The Capital, Strategy and Procurement Manager received no formal training from the Council on procurement or the Council's Constitution until the last year or so.
- The Council's contract standing orders were confusing as Rule 24 identified certain contracts as not requiring competitive tendering including:

'the execution of work of a specialised nature and any acceptable substitutes for which are carried out by only one contractor'

and

'contracts with specialist persons where the personal skill of those persons is of primary importance'

- This was the approach he took in respect of the HPR contract given what he described as 'compelling reasons' why HPR was the obvious choice to undertake the supervision work. The only requirement of an officer relying on Rule 24 was that he provided a note of the action taken for audit purposes.
- The Capital, Strategy and Procurement Manager claimed that the approach taken by him in respect of the HPR contract was in line with central government's approach to a partnership approach to construction work as advocated in the Latham and Egan Reports and that the Council applied for 'Beacon Council' status citing the Castle headland project as an example of this partnership approach.
- He commented on the capacity problems of the corporate functions of the Council and in his view this led to the position taken by finance and legal staff to be 'passive' on occasions. He said he had raised this as an issue with his Director and knew it to be a view held by others in the organisation.
- In order to provide DEFRA with an accurate application for grant for the HPR supervision work in March 2004 the Capital, Strategy and Procurement Manager decided to undertake a Best Value exercise using the most recent figure of £1.2 million. He told me that the Best Value exercise acknowledged that the HPR contract had not been the subject of a tendering exercise but in order to provide DEFRA with full details the Best Value exercise was undertaken. He accepted that although it would not have changed the choice of consultant it nevertheless attempted to validate the choice. Because of the non-tendering approach a method was devised to benchmark HPR against other 'hypothetical' consultants. The CIRIA 117 model was considered to be the only way to do this. DEFRA subsequently advised the Council that the Best Value assessment appeared to suggest that that the Council had achieved the most beneficial price for an engineering consultant to supervise the planned construction works.
- The Capital, Strategy and Procurement Manager told me that he rejected the allegation in the Public Interest report that this was a 'bogus' exercise. He undertook it in good faith although he knew that it would most likely not have changed the outcome. He suggested that it may have resulted in an initial cost proposal significantly less than the original estimate of £1.8m in November 2001.

5. The Chief Executive

The external auditor's Public Interest Report makes no mention of the involvement of the Council's Chief Executive either generally in respect of coastal protection schemes or specifically in respect of the Castle Headland scheme and the engagement of HPR. The Chief Executive told me that he saw it as his role to ensure resources were in place to properly deliver contracts. He knew that there was a lack of in-house capacity for the major coastal protection schemes and that HPR were hired in to undertake supervision work with Capital, Strategy and Procurement Manager as the 'interface' with HPR. He told me that he could remember the Monitoring Officer telling him in the middle of 2002 that legal services were under pressure but he claimed that he had no knowledge of the email from the Contracts Lawyer or of the issues behind it at that time - he said that he was not 'brought into the loop' and nor was COG even though he now knows that the Monitoring Officer, the S151 Officer and the Director of Technical Services all knew of the problems through the email of 1 August 2002.

His view is that despite the concerns raised in that email the Capital, Strategy and Procurement Manager probably thought everything was 'ok' – the contract was up and running, the fact there was no written contract was not a problem and the issues raised in the email were not really of concern. It was not the style of the Director of Technical Services to raise the matter at COG, the Monitoring Officer would have let it build up and the S151 Officer probably only became aware quite late. He subsequently made the following statement to me :

' neither the email of 1 August nor the issues arising from it were raised at any meeting of COG nor were they brought to my attention separately. If they had been, there would have been actual knowledge of her (the Contracts Lawyer's) concern regarding the serious breaches of the Council's Contract Procedure Rules and the Council acting in an ultra vires way. In such circumstances it would have been incumbent on members of COG or myself to have acted positively to mitigate the situation and report upon it as indeed (she) indicates in her final paragraph with reference to the Monitoring Officer's responsibility. This was not the case and accordingly neither COG nor myself were put on notice and therefore we could take no remedial action. The minutes of COG meetings from August 2002 onwards will confirm this point'.

I have checked the minutes of COG around that time and that is indeed the case. However, like many minutes of such meetings they are very limited in the way they record discussion of issues as opposed to decisions reached. The former Monitoring Officer was adamant that he had raised the issue following the 1 August 2002 email.

The Chief Executive told me that he first became 'formally' aware of the HPR problems in February 2004 when the Contracts Lawyer met him to discuss the matter. As a result he contacted the external auditor and Watson Burton were brought back in. Prior to this he only knew of the problems with the Castle Headland scheme through the 2002/3 Annual Audit of Accounts Management Letter. The concern then was with getting things sorted out rather than contemplating disciplinary action. The practical issue was

how to deal with the mounting 'compensation events'. External audit then looked at the issues in some detail and in May 2004 produced a draft Public Interest Report.

He was not pleased with the comments on the governance arrangements but maybe relieved that there was no mention of him in the report. He considers that the Public Interest Report may have got things out of proportion and does not agree with its conclusions.

He accepts that questions have arisen as a result of the Report that need answering, particularly around the HPR contract. He considers that there is strong mitigation for the Capital, Strategy and Procurement Manager who was only concerned to get the work up and running. He clearly saw legal as a constraint that did not fit in with what he described as the Capital, Strategy and Procurement Manager's 'gung-ho' attitude. Other senior officers named in the Report have moved on – to retirement or other posts – so it is not possible to consider disciplinary action in their cases.

He believes that the organisation has learned a great deal from a painful experience and many changes have been put in place as a result. He accepts that the rules and procedures that applied at the time were not as clear and effective as they should have been and the changes are designed to put this right with appropriate training for those who will operate them

The Chief Executive also commented that the Corporate Officer Group now operates on what he described as an 'open' basis and people should feel free to raise such issues in the future.

All of those I met during my Investigation were clear that the Chief Executive has been effective – this is recognised in the report on the CPA. He is also seen by all those I spoke with – elected members, current and former senior managers – as a very 'hands on' chief executive who has made it his business to know in detail all that goes on inside the organisation. He has been there a long time and 'understands better than anyone' the way things work in Scarborough. This picture of the Chief Executive's approach to his job is widely shared and underpins the doubts expressed to me by elected members in particular about his claim that he did not know that there were problems with the HPR contract during 2002. Corporate Officer Group is said to have examined in detail all reports for Council meetings to the extent of correcting typing errors and members told me they found it inconceivable that the Chief Executive would not have checked that the contractual arrangements on such a high-profile project were in line both with the Council's Constitution and with procurement requirements. Either that, or he did know but allowed 'corners to be cut' in order to ensure delivery of the project in time. In any event, those members I talked to saw it clearly as the Chief Executive's responsibility to ensure that there was good governance of the Council's capital projects and that it was his responsibility that the proper checks and balances were not in place and/or operating effectively. The view of members is understandably that if this was not the case then the Chief Executive has some degree of culpability for any organisational failures. Members also see it as the Chief Executive's responsibility as Head of the Paid Service to ensure that there was in place an organisational climate of 'openness' in which senior managers felt able and confident to raise issues of concern that would be dealt with positively. By his own admission that was not the way that COG operated at that time and the fact that

the Contracts Lawyer, despite her serious concerns, “*would not have dreamt of telling the Chief Executive about her concerns*” tells its own story about the culture of the organisation at that time.

2.11 The role of elected members

A number of those I met commented on the part played by elected members of the Council at the time of the key events in 2001/02:

- It is clear that elected members generally, and the Council’s political leadership in particular, feel let down and embarrassed by what happened during this period.
- The Contracts Lawyer was quite surprised when I suggested to her that, given the lack of organisational response to the email she sent on 1 August 2002, she might have raised her concerns with the Chief Executive direct, with the Leader of the Council or with the Cabinet member concerned. Her comment was that “she would not dream of doing so at that time – although she might now”. It appears that quite senior officers saw elected members as not directly involved in such ‘managerial’ issues at that time. It is encouraging that this culture appears to have changed significantly in recent years.
- There are important lessons to be learnt from this episode in the life of the Council. Elected members need to be more proactive and challenging, they must ensure that they ask intelligent questions and seek information not only through formal scrutiny arrangements but also through regular updates on key council projects – there are real dangers in assuming that ‘no news is good news’

2.12 Recent changes to process

The Public Interest Report highlighted a number of weaknesses in the Council’s processes and new Contract Procedure Rules have been adopted as a result. The Council’s response to the Report was set out in a Report to the Council on 5 January 2005 by the Chief Executive and the Head of Legal Services. This Report addressed the six recommendations by the external auditor in the Public Interest Report that the Council should:

- a) Introduce procedures to ensure compliance with procurement regulations and the Council’s own tendering rules
- b) Ensure legal and financial advice is sought to assess risks before entering into contractual arrangements so that mitigating controls can be put in place
- c) Appoint professional advisers through a competitive process

- d) Improve the quality of reports to members to ensure balanced and full information is presented
- e) Ensure statutory officers are able to discharge their roles effectively
- f) Where non-compliance with regulation and procedures is identified, agree prompt action to address weaknesses

The Report recommended that the recommendations in the Public Interest Report be accepted in their entirety and set out detailed proposals to respond positively to the six recommendations. Many changes are now in place and appropriate training is also underway.

In addition, the EU Procurement Rules have also changed recently in recognising 'framework contracts' as a legitimate mechanism for establishing long-term arrangements (a maximum of four years) with a contractor with contracts from which work can be 'called off' as and when required. This is a mechanism that is being considered by the Council.

SECTION 3: CONCLUSIONS

- 3.1 The external auditor's Public Interest Report and my Investigation point to what is seen both inside and outside the Council as a sorry tale of errors, complacency and lack of 'corporateness' on the part of key individuals in an organisational environment and culture that allowed this to happen. The result has been a period of embarrassment and even public ridicule for the Council at large and for individual elected members. None of the key senior Council officers involved at that time in this episode come out of it well but it is difficult to allocate individual responsibility given the problems I experienced in meeting with a number of the key players including senior officers who have left the Council's employment. The fact that there is no evidence of financial loss or fraudulent activity, whilst welcome, does not detract from the serious nature of the failure to ensure effective governance of the Council's business.
- 3.2 It is clear and very encouraging that the Council appears to have learnt a great deal from this difficult experience and I saw a genuine desire on the part of virtually all those that I spoke to during my Investigation to use the experience to help change the culture of the organisation and to put in place a range of new procedures and protocols to ensure that the experience is never repeated.
- 3.3 It was also clear from the discussions I had with elected members during my Investigation that some elected members and some external players expect that some Council officers should face disciplinary action as a result of their actions or inactions, and that 'closure' on this episode cannot be achieved without this. I was asked to advise the Appointment Committee whether any individual senior officer should be the subject of a disciplinary investigation.
- 3.4 The job of local authority officers is to give advice to elected members, to the Council at large, to its Executive, Committees and sub-Committees and to other officers as required. It is also to carry out the work of the Council under the direction and control of the authority, its Executive, its Committees and sub-Committees and any other person to whom authority has been properly delegated. Above all, senior officers occupy a position of trust.
- 3.5 At paragraph 6.135 of the 'Report of the Inquiry into the Conduct of Local Authority Business' (otherwise known as the 'Widdicombe Report' of 1986) it is said that, in their capacity as advisers, council officers are:

'responsible for ensuring that the Council and its committees are informed of the facts, the law and all other relevant considerations before they make decisions. They are also responsible for proposing, and advising on, policy options'.

3.6 Officers called on to provide information, to advise or to help formulate advice owe a duty to discharge those responsibilities with reasonable care. This is a duty which they owe to the Council as a whole. Failure to discharge this duty for example by withholding or misrepresenting material information is misconduct. It would be misconduct for an officer to remain silent or otherwise inactive if a failure to report or otherwise disclose information may prejudice the authority in whose interests he/she is required to act.

3.7 Overall the Council was rated as ‘good’ in the 2003 Corporate Performance assessment by the Audit Commission. The report on the assessment concluded that the Council faces significant challenges – but has risen to them.

‘It has high ambitions for the physical and economic regeneration of its communities based on reinvigorating tourism, protecting and improving the coast, tackling disadvantage and encouraging inward investment’

‘the Leader and Chief Executive offer ‘strong leadership’ within the council as it restructures and modernises in order to deliver its demanding agenda’

and

‘are driving a change in culture away from departmentalism towards a cross-cutting focus and councillors, managers and staff have risen to the challenge’

3.8 This was a challenging agenda for a small organisation and my Investigation has pointed to what can happen if that agenda is pursued relentlessly. Corners get cut, individual officers are given their head and the normal checks and balances are not always firmly in place, and even if they are, may not always be followed or respected.

Scope for disciplinary action

3.9 What follows is a brief assessment about whether any serving officer of the Council has potentially failed in their duty as described above and should be the subject of a disciplinary investigation. It may well be that members of the Council and the public at large consider that former employees of the Council should be called to account for their involvement in the matter but that is simply not possible. Disciplinary action can only be taken against current employees of the Council. Only two current employees are in that sense eligible for potential disciplinary action:

The Head of Engineering and Procurement Service (formerly the Capital, Strategy and Procurement Manager)

and

The Chief Executive

3.10 However, I need to draw to the attention of the Appointments Committee that the procedure for taking disciplinary action against a Chief Executive as Head of the Paid Service is governed by statute. It involves the establishment by the full Council of a Disciplinary Panel of Members (in line with Scarborough Borough Council's Constitution I understand that this would be the Appointments Committee although substitute members would need to be appointed) to decide whether a *prima facie* case for disciplinary action exists and, if so, to conduct a Preliminary Investigation. If the Disciplinary Panel concluded, firstly, that a case does exist and, secondly, that it cannot be dealt with 'informally' (i.e. that it warrants no more than an unrecorded informal warning), the statute requires that, following the preliminary investigation, the matter be referred to a 'Designated Independent Person' who must also investigate the matter and produce a recommendation on disciplinary action (or not) to the full Council.

3.11 If the Appointments Committee decides to instigate disciplinary investigations against both the Chief Executive and the Head of Engineering and Procurement Service it could consider whether to extend the Chief Executive's statutory arrangements to the Head of Engineering and Procurement Service (who is subject to the JNC for Chief Officers Conditions of Service) and to have one disciplinary investigation rather than two parallel processes.

3.12 So far as the Head of Engineering and Procurement Service (formerly the Capital, Strategy and Procurement Manager) is concerned the issues that may be considered appropriate for disciplinary investigation are:

- 1) His failure to properly follow the Council's procurement procedures in respect of the HPR supervision contract as set out in the Council's Constitution and the Contract Procedure Rules with the result that the adequacy of the appointment process, the specification and the terms agreed with HPR were not sufficiently robust to protect the interests of the Council and local and national taxpayers. Procurement regulations (including those required under EU Regulations) were not complied with and in the view of the external auditor the appointment of HPR was unfair and unlawful. The failure to enter into a lawful and fair contractual relationship with HPR, in the view of the external auditor, exposed the Council to the unnecessary risk of financial loss and poor value for money
- 2) His failure to secure best value on behalf of the Council in dealing with HPR as subsequent advice obtained by the Council suggests that payment terms transferred to the taxpayer the risks involved in delays in supervising complex engineering work
- 3) His failure to fully involve appropriate officers of the Council at appropriate stages in the procurement process

3.13 So far as the Chief Executive is concerned the issues that may be considered appropriate for disciplinary investigation are:

- 1) His failure to ensure that he was fully informed throughout key stages of a major procurement exercise and thereby to ensure that the terms agreed with HPR were sufficiently robust to protect the interests of the Council and local and national taxpayers. The consequence was that there was not a lawful and fair contractual relationship between HPR and the Council
- 2) His failure to establish and operate effectively appropriate management control systems that would have enabled organisational concerns relating to the Council's contract procedures to be raised with himself, the Chief Officer Group and the Council's political leadership in a timely and effective manner

SECTION 4: RECOMMENDATIONS

Recommendation 1: that the Appointments Panel consider the evidence that I have collected during my Investigation and presented in this Report and decide whether to make appropriate arrangements for Preliminary Investigations into the matters that I have set out in paragraphs 3.12 and 3.13 respectively in respect of the Head of Engineering and Procurement Service and the Chief Executive.

Recommendation 2: if the Committee decides to instigate disciplinary investigations in respect of both the Chief Executive and Head of Engineering and Procurement Service it should consider whether to extend the Chief Executive's statutory arrangements to the Head of Engineering and Procurement Service (who is subject to the JNC for Chief Officers Conditions of Service) and to have one disciplinary investigation or to have two parallel processes.

Appendix 1

Author's qualifications

Richard Penn is a former local authority Chief Executive of two major metropolitan authorities, Knowsley Metropolitan Borough Council (from 1980 to 1989) and the City of Bradford Council (from 1989 to 1998). He is an economist by training and has 35 years wide experience of working at the most senior levels across the public sector both as a local authority officer until 1989 and as a consultant for the Employers Organisation, SOLACE Enterprises, the Office of the Deputy Prime Minister, the Audit Commission and on my own account. He also has wide experience of operating as a non-executive for the Boards of public sector organisations and is currently the Chair of the South Wales Probation Board and the Commissioner for Standards in the National Assembly for Wales. He was a Commissioner with the Legal Services Commission from 2000 to 2003 and a Commissioner with the Equal Opportunities Commission from 1998 to 2003.

Appendix 2

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Your Ref:
Our Ref: HHR/GBM

26 April 2005

Dear

Preliminary Investigation – Audit Commission Report into the Management of the Council’s Coastal Protection Schemes

You are invited to attend a meeting with Richard Penn, an Associate Consultant with the Employers’ Organisation (EO) for Local Government, who has been appointed by this Council as an Independent Investigator to undertake the Preliminary Investigation into the Management of the Council’s Coastal Protection Schemes.

Your appointment with Richard Penn has been scheduled for ? May 2005 and will be held in your own office.

I attach to this letter a copy of the terms of reference agreed by the Appointments Committee, from which you will see that the Preliminary Investigation forms part of the model disciplinary procedure for Chief Officers employed under the Joint Negotiating Committees Conditions of Service for Chief Officers and Chief Executives. This Preliminary Investigation will gather information to establish whether or not there is a prima facie case of misconduct/capability in respect of any of the Council’s senior officials which may need to be considered further in a formal disciplinary investigation. It should be noted therefore that this Preliminary Investigation does not in itself constitute a disciplinary investigation.

In accordance with the model adopted within the Joint Negotiating Committee Conditions of Service for dealing with such investigations, you have a right to be accompanied at the interview by either a Trade Union Representative or a work colleague. If you wish to be accompanied please advise me of the name of the person concerned.

Contd

Richard Penn has informed me that he is prepared to receive any written submissions you may have prepared relevant to this subject in advance of your meeting. I would ask that you let me have a copy and I will forward it to Richard prior to your interview. Please confirm to me your availability on the time and date specified in this letter and whether or not you wish to be accompanied.

Yours sincerely

R Kaye
Head of Human Resources

Appendix 3

List of those met with during the Investigation

1. Chief Executive, Chief Executive, Scarborough Borough Council
2. Capital, Strategy and Procurement Manager, Head of Engineering and Procurement Services, Scarborough Borough Council
3. The Contracts Lawyer, Scarborough Borough Council
4. The Head of North Yorkshire Audit Partnership
5. The former Head of Legal Services and Monitoring Officer, Scarborough Borough Council)
6. Councillor Eileen Bosomworth, Leader, Scarborough Borough Council
7. Councillor John Warburton , Leader of Labour Group, Scarborough Borough Council
8. Councillor Brian O’Flynn, Leader of LibDem Group, Scarborough Borough Council
9. Councillor Popple, Leader of Independent Group, Scarborough Borough Council
10. Councillor Allanson, Cabinet Member for the Environment, Scarborough Borough Council