


19 February 2007



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Waveney District Council: Audit of Accounts 2004/05: Objection: Southwold Harbour Undertaking

I write with reference to your objection to the Accounts of Waveney District Council (the Council) for the financial year ended 31 March 2005 in relation to the income and expenditure of Southwold Harbour.

As set out in my letter of 9 February 2006 I have identified the main contentions that you have advanced as:

- That the Council has received revenues and incurred expenditure in the General Fund that relate to and should be accounted for in the Harbour Undertaking accounts;
- That the Council has applied depreciation and capital charges to the Harbour Undertaking assets for which there is no provision in the 1933 Act and Order;
- That surplus revenues in the Harbour Undertaking accounts have unlawfully been credited to the General Fund; and
- That the Council has applied income and expenditure to the wrong funds or accounts in relation to the operation of assets that are not within the Harbour Undertaking.
- That the Council has failed to use all the revenues of the Harbour Undertaking in accordance with article 39 of the Pier and Harbour Orders (Elgin and Lossiemouth and Southwold) Confirmation Act 1933.

I have also addressed the preliminary issues raised by you regarding the ownership of land in and around the harbour and the need to publish separate accounts in relation to the Harbour Undertaking.

You are aware that the audits of the accounts of the Council for the financial years prior to 2004/05 have already been completed and the auditor's powers in relation to the earlier years are now at an end. I am therefore only able to consider the transactions in the Council's accounts for 2004/05.

The powers and duties of the auditor, set out in the Audit Commission Act 1998 and the Code of Audit Practice are limited. In accordance with those powers I have considered the information you have provided and made some enquiries of my own. I have provided both

you and the Council with an opportunity to resolve the issues concerning you prior to my acceptance of the objection and I am aware that you have met with the Council's officers. I have received oral representations from you and Council officers and provided a note accordingly to all parties. I have also sought information from the Department for Transport. All parties have exchanged a number of letters and documents with me and I now consider that I have sufficient evidence to determine the objection.

The Audit Commission Act 1998 provides:

- that where it appears to me that an item of account is contrary to law, I may apply to the Court for a declaration that the item of account is contrary to law and seek an order for the rectification of the accounts (section 17); and
- that I should consider whether in the public interest, I should make a report on this matter in order that the matter may be considered by the Council or brought to the attention of the public (section 8).

Decision Not To Exercise My Powers To Apply To The Court Or Issue A Report In The Public Interest

I have considered the documentary evidence you have provided. I have also considered the representations made by the Council and yourself.

As a result I have decided not to:

- apply to the Court for a declaration that there are items of account that are contrary to law and seek rectification of the accounts in accordance with section 17 of the Audit Commission Act 1998 (the Act); or to
- issue a report in the public interest under section 8 of the Act.

In so far as I have decided not to apply to the Court for a declaration that an item of account is contrary to law, you are entitled to a Statement of Reasons for my decision. This letter constitutes my Statement of Reasons.

Background

Southwold Harbour and the Harbour Undertaking were acquired by the Borough of Southwold Corporation in 1931 as confirmed by virtue of the Pier and Harbour Orders (Elgin and Lossiemouth and Southwold) Confirmation Act 1933 (the 1933 Act) and article 6 of the Southwold Harbour Order 1933 (the Order). My enquiries have not identified any subsequent amendments to the financial provisions of either the Act or the Order although there have been legislative changes to the general accounting framework applicable to all councils since that time.

The Council has been debating a long term strategy for the harbour and the caravan and camping site which might involve sale or transfer of the assets to a trust or some other



corporate entity separate from the Council. I am also aware that the future of both the Southwold and North Denes Caravan parks have been subject of a Scrutiny Committee review and the report issued in April 2005 has been discussed by Members. That report identified a number of issues of poor procedures in dealing with the future options for the Caravan Parks. I am also aware that the Council dealings in relation to the Caravan Parks have already been subject to public debate.

The Council has argued that the Harbour Undertaking has been in deficit continuously from 1974/75 up to 1995/96 and in surplus from 1996/97 until 2004/05 with the exception of 2001/02. The Council confirms that it has used the year by year surpluses to repay the accumulated harbour fund deficit and that as at 31 March 2006 the deficit borne by the General Fund, amounted to approximately £313,000.

The Council has treated income and expenditure of the harbour, the public conveniences and the caravan and camp site (each separately identified in the underlying records) as activities of the Harbour Undertaking in the 2004/05 accounts, repeating the practice of previous years. Included within caravan and camp site income and expenditure are income and expenditure in relation to the North Field used for camping. The income and expenditure attributable to the North Field is not separately identifiable in the accounting records. Car park income is separately identifiable but has been aggregated within the harbour activities account. The Council has applied the general accounting policies, practices and treatments applicable to local authorities to the Harbour Undertaking as set out in the relevant local government legislation and by the Chartered Institute of Public Finance and Accountancy in its *Code of Practice on Local Authority Accounting in the United Kingdom* published by the Chartered Institute of Public Finance and Accountancy/Local Authority (Scotland) Accounts Advisory Committee. However the Council, in recent years, has not published a separate account in its statement of accounts as required by the legislation. It has also not complied with the additional requirements of other legislation in the compilation or filing of accounts of the Harbour Undertaking.

Transfer of Functions

Following enactment of the Local Government Act 1972, Waveney District Council (the Council) was created as successor to the Southwold Borough Council and other adjoining councils. Southwold Borough Council was, by virtue of article 14 of the Order, the Harbour Undertaker. Section 337 of the Local Government Act 1972 made general provision for the transfer of functions from the old to the new councils. I am of the view, therefore, that the function of Harbour Undertaker passed to the Council in 1972.

Transfer of Land

The North Field

In discussing the transfer of harbour lands you have distinguished those lands transferred by virtue of the 1933 Act and other land treated by the Council as harbour lands (described as the North Field).



The Council has now accepted that this land, bounded by Salt Creek and Ferry Road, was not included in the original Harbour Undertaking as conveyed in 1906. In turn the Council has accepted that this land is, on the basis of property transactions alone, not part of the current Southwold Harbour Undertaking. In turn it can be argued, again on the basis of property transactions that the operation of the camping site on the North Field is also not part of the Undertaking, although the Council has treated it as such.

I am also aware of another line of argument in relation to the North Field in that this land was one of two parcels of land subject to the will of William Gobell and that land was then held as charitable land by the Southwold Common Trust. Counsel has argued that this land passed to Southwold Town Council by virtue of section 210(2)(b) of the Local Government Act 1972.

Whatever the legal ownership of the North Field it is clear that the District Council has used this land as a camping site since some time after 1974 in conjunction with the adjacent harbour land used as a caravan park, in the belief that it owned both. I am unaware whether or not the Town Council as trustee is still actively seeking possession of the North Field although the Town Council sought Counsel's opinion on the ownership of the land in question as part of its negotiations with the District Council over the future management of the harbour and did at one stage issue formal notice to the District Council to quit.

However I do not consider that the ownership of the North Field is a matter on which I need to make a decision for the purposes of determining this objection. I conclude that the Council has held possession of the North Field whether or not legal ownership has been fully established and as such should account for any economic activity that has taken place under its direction on that land. The question remaining to be decided is under what account (the Harbour Undertaking or the General Fund) that economic activity should fall, which I discuss later.

The Transfer of Land in 1974

You have also contended that the harbour lands conveyed to Southwold Corporation in 1933 were not transferred to the Council in 1974. The Local Authorities (England) (Property etc) Order 1973 provided for the transfer of land between demising and succeeding councils unless retained as of historic or ceremonial property for the new town or parish created or existing at that time. It was a matter for the former Southwold Borough Council to determine prior to its demise what land should become vested in Southwold Town Council under the provisions of the 1973 Order. No evidence has been provided to me that the predecessor council made any such determination in relation to the lands of the Harbour Undertaking or that the new Town Council has been able to make any assertion of ownership of the harbour lands conveyed in 1933. It therefore appears to me that the land comprising the Harbour Undertaking as defined in the 1933 Act was transferred to the Council.

Even if I am incorrect in my conclusion about the 1974 transfer, I remain of the view that I set out in relation to the North Field that the Council has held possession of the Harbour lands whether or not legal ownership has been fully established and as such should account for any economic activity that has taken place under its direction on that land.

Powers of the Harbour Undertaking and of the Council

The Council has powers to provide car parks, public conveniences and a caravan and camping site. Such activities would normally be accounted as part of the General Fund. The Council also has powers conferred upon it as successor harbour undertaker by virtue of the 1933 Act. The powers granted to the then Corporation as the harbour undertaker included powers to acquire and dispose of freehold or leasehold land by agreement; grant easements; to maintain and improve works to harbour walls jetties, buildings offices and other works and conveniences which may be found necessary, to provide harbour equipment and facilities, and to undertake work in the river channels and harbour by dredging and excavation to provide sufficient waterway and approach to the harbour. However the 1933 Act does not make specific provision for a car park or a caravan and camping site. I can accept that the provision of a public convenience and of a car park are necessary ancillary facilities to the operation of the harbour and as such can reasonably be included as part of the Harbour Undertaking. However the caravan and campsite has, in my view no such causal connection with provision of harbour facilities apart from that of geographical location and as such is not within the powers of the Harbour Undertaking although it is within the other powers of the Council. Indeed the Council has now recognised that the North Field, used for camping, is not part of the Harbour Undertaking's land and therefore may not therefore fall to be accounted for in that account. As the Harbour Undertaking has in my view no power to provide the caravan and camping park, I conclude that the income and expenditure and surplus retained in relation to the caravan and campsite are not to be treated as part of the income and expenditure of the Harbour Undertaking save for a reasonable internal transfer or recharge for the use of harbour lands from the General Fund.

Keeping Separate Accounts

Article 41 of the Order requires that the Council should keep the accounts of the Harbour Undertaking separate from all their other accounts. Reading this provision along with articles 39 and 40 of the Order it would appear that the intention of the provisions taken as a whole was to ensure that the revenue earned by the undertaking was initially "ring fenced" so that it was applied to the payment of expenses of operating the undertaking, repayments of capital and interest on borrowings and for extending and improving the undertaking.

The Council included a separate account for the Harbour Undertaking in 1979/80 Financial Statements showing income and expenditure in relation to the caravan site, the harbour and the public conveniences and contained a one line summary of the financial position of the Harbour Undertaking in a summary in the 1981/82 statements. It may have published similar information in relation to other years.



However the Council has not, since 1990, published separate accounts for the undertaking but in accordance with the relevant proper accounting practice of analysing its income and expenditure on a subjective basis had kept subsidiary records of the income and expenditure of the undertaking in its underlying accounting system.

In relation to the accounts for 2004/05 the Council has, in order to comply with one possible interpretation of article 41 of the Order, amended its accounts to include a memorandum account in its statement of accounts in respect of the harbour undertaking separated into three headings - the caravan site, the public conveniences at the harbour and the harbour itself - separately from all other accounts of the Council and in so doing distinguished capital and revenue transactions. The Council has awaited the decision on this objection before deciding on how it will meet disclosure requirements in the future.

The Order at article 41 prescribes the requirement to keep accounts of the Harbour Undertaking separately from all other accounts. Apart from distinguishing capital from revenue, the Act makes no provision as to the separate publication, or as to the form and content that publication should take. However the Accounts and Audit Regulations 2003 (SI 2003/533) provide at regulation 7 (1) that councils "*shall prepare in accordance with proper practices a statement of accounts for each year which will include.... any other statement relating to each and every fund in relation to which the body is required by any statutory provision to keep a separate account*".

I therefore conclude that the Council, having previously amended its accounting statements with my agreement, has now complied with the requirement to publish a separate account of the Harbour Undertaking for 2004/05. Although I have now formed the view that the caravan and camp site is not operated under the powers of the Harbour Undertaking and as such should not be reported as part of the undertaking's accounts, that publication in my view contained sufficient analysis as to meet with the requirements of the Order and of the Accounts and Audit Regulations. I will monitor compliance with the requirement to publish the Harbour Undertaking accounts in any subsequent year for which I serve as the Council's appointed auditor.

Submission of accounts to the Department for Transport

The Council has accepted that it has not had full regard to the requirements of the Harbours Act 1964 (the 1964 Act). It has accepted that section 42(1) of the 1964 Act requires the Council as statutory harbour undertaker to prepare an annual statement of accounts in Companies Act format relating to harbour activities and any associated activities carried on. I do not conclude that the 1964 Act requires local authorities to account for their harbour activities, that is identify all costs and provide for all charges on a Companies Act basis prior to recording the transactions in the statutory local authority accounts. I consider that the requirement of the 1964 Act is met by reporting a restatement of the activities already properly recorded in the accounts of the authority on a Companies Act basis so that the benefits identified by the Department of Transport producing shadow commercial accounts are met. It is a matter for the Department of Transport to monitor compliance with this requirement.



The Objection

Having determined that the Harbour Undertaking can, in my opinion, include the provision of public conveniences and car parks as they are ancillary to the activities of the harbour as facilities needed by users of the harbour and that the caravan and campsite are not harbour activities, I now turn to the main heads of objection set out in my second paragraph above.

Has the Council has received revenues and incurred expenditure in the General Fund that relate to and should be accounted for in the Harbour Undertaking accounts?

Has the Council has applied income and expenditure to the wrong funds or accounts in relation to the operation of assets that are not within the Harbour Undertaking?

The first and fourth heads of objection are interrelated and I have therefore addressed the issues jointly.

Article 3(1) of the Pier and Harbour Order 1933 states that:

the "harbour revenue" means and includes the charges dues rates tolls and other moneys and receipts which may be taken and received by way of income from or in respect of the Harbour Undertaking under the authority of this Order;

the "Harbour Undertaking" means and includes as the case may require the harbour lands property and conveniences held therewith the right to levy charges dues rates and tolls and all other powers rights and authorities and privileges thereto vested on the Corporation by this Order

Article 39 of the Order states that:

The Corporation shall apply the harbour revenue in the order following and not otherwise:

- 1) *in payment of the costs of and connected with the preparation of the order*
- 2) *in the payment of the expense properly chargeable to the revenues of the maintenance, repair and management of the Harbour Undertaking and all conveniences connected therewith*
- 3) *in payment year by year of the interest accruing on money borrowed*
- 4) *in payment of the instalments due on money borrowed*
- 5) *in extending and improving the Harbour Undertaking*
- 6) *in making payments to a reserve fund*
- 7) *in repayment to the general rate fund of all monies paid thereout for the purposes of the Harbour Undertaking; and*
- 8) *in reduction of any principal moneys borrowed*



I have stated that I do not consider that it is necessary for the ownership of the North Field or the land comprising the 1933 conveyance to be determined as a precursor to my determination of your objection. The Council may have enjoyed beneficial ownership by virtue of the 1933 Act or may have enjoyed unfettered possession of it for sufficient time so that others can no longer assert ownership over the land. Even if the North Field is not conveyed as part of the harbour it has been in some form of possession by the Council and it can in my view still form part of the trading activities of the Council and income and expenditure in relation to it properly included in the accounts.

The Council has maintained separate cost centres in relation to activities inside the harbour area for the harbour, the public conveniences and the caravan and camping site since 1974. Transactions reflecting income and expenditure in relation the harbour itself, the caravan/camping park and the public conveniences were recorded in the relevant separate general ledger costs centres. Income and expenditure of the harbour car park are accounted as part of harbour activities after reallocation from the General Fund accounts covering all the Council's car parks. Annual surplus/deficits are transferred to the general harbour code at year end. Year end balances have been treated as part of the General Fund (previously the General Rate Fund Account). In addition the cost centres have borne reallocations of central overheads and capital accounting recharges in accordance with proper accounting practice extant at the relevant time. I will discuss the issue of recharges and proper accounting practice later in this letter.

I have discussed the powers of the Harbour Undertaking and that of the Council and concluded that the undertaking lacks powers to provide a caravan and camping site and therefore the income and expenditure in relation to that activity is not part of the Harbour Undertaking. Such income and expenditure should therefore form part of the General Fund.

The income from car parking arising from the harbour car park is not initially accounted separately from that for the other car parks in Southwold. However income is apportioned to the harbour account on the basis of the income recorded to the three car parking machines on harbour land. The apportionment does not appear to reflect income received by the Council in relation to season tickets issued that allow use of all Waveney car parks. I accept that the amount is unlikely to be significant but it should be adjusted in relation to future years.

The revised annual statement of accounts for 2004/05 included a separate note to the consolidated revenue account of the income and expenditure and surplus of the Harbour Undertaking. The underlying records of the Council provide detail of the charges made or transfers to or from the general revenue or other accounts of the Council such as depreciation or overheads prior to calculation of the net position for the year.



Table 1: Income and Expenditure: Southwold Harbour Undertaking 2004/05

	Caravan/ Camping Site	Harbour	Public Conveniences	Total
	£	£	£	£
Income	284,895	74,128	-	359,023
Expenditure	216,903	52,389	25,816	295,108
Surplus/deficit	67,992	21,739	(25,816)	63,915

Source: WDC Analysis of I&E accounts produced as an accounts working papers March 2006

Note: Harbour income of £74,128 includes £19,925 net of VAT from Southwold Car Park Pay and Display account, service fees and charges of £6,403 and Property and Land rents of £48,800.

Having examined the accounting entries set at above I consider that the income and expenditure transactions of the direct harbour activities, the car park and the provision of public conveniences have all been included correctly in the accounts of the Harbour Undertaking as set out in the note in the statement of accounts. I also consider that the inclusion of the caravan and camping park income and expenditure which should be part of the General Fund has resulted in an overstatement of the overall surplus in accordance with the requirements of the Order although I recognise no corresponding charge for the use of the harbour land has been made to the General Fund and recorded in the accounts of the Harbour Undertaking. The amount of this charge would need to be determined on a fair rental basis.

Has the Council has applied depreciation and capital charges to the Harbour Undertaking assets for which there is no provision in the 1933 Act and Order?

The Council has charged a total of £51,482 depreciation and £23,437 in capital financing charges in relation to Harbour Undertaking assets as set out in table 2. However if my view that the income and expenditure of the caravan and camp site are part of the General Fund is correct the only the charges in relation to the harbour and public conveniences now need to be considered.

Table 2: Expenditure includes direct costs and overheads/recharges 2004/05

	Caravan/ Camping Site £	Harbour £	Public Conveniences £	Total £
Direct Costs	139,322	8,198	12,667	160,187
Recharges:				
Depreciation	42,856	2,294	6,332	51,482
Capital Financing	14,250	2,370	6,817	23,437
Other	20,475	39,527	-	60,002
Total Expenditure	216,093	52,389	25,816	295,108

Source: WDC Analysis of I&E accounts produced as an accounts working papers March 2006

Note: Other recharges include costs of departmental and central management reallocated to harbour accounts.

Having examined the direct costs of the harbour and public conveniences set out above I have already accepted that these costs comprise of the type of payments of expenses properly charged to the Harbour Undertaking set out in article 39(2) of the Order.

I have previously referred to the Accounts and Audit Regulations 2003 and accepted that regulation 7 requires the Council to include in its published statement of accounts a summary of the Harbour Undertaking accounts. Regulation 7 also requires that a Council shall prepare its accounts in accordance with proper practices. In addition section 21(2) of the Local Government Act 2003 defines proper practices:

(1) The Secretary of State may by regulations make provision about the accounting practices to be followed by a local authority, in particular with respect to the charging of expenditure to a revenue account.

(2) In any enactment to which this subsection applies, reference to proper practices, in relation to accounts of a local authority, is to those accounting practices-

(a) which the authority is required to follow by virtue of any enactment, or

(b) which are contained in a code of practice or other document which is identified for the purposes of this provision by regulations made by the Secretary of State.

(3) In the event of conflict between practices falling within paragraph (a) of subsection (2) and practices falling within paragraph (b) of that subsection, only those falling within paragraph (a) are to be regarded as proper practices.

(4) Subsections (2) and (3) apply to any enactment contained in-

(a) this Act,

(b) any Act passed after or in the same Session as this Act,

(c) the Local Government and Housing Act 1989 (c. 42),



*(d) the Audit Commission Act 1998 (c. 18), and
(e) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) whenever made.*

(5) The power under subsection (2) (b) is not to be read as limited to the identification of an existing document.

I consider that the wording of section 21 of the Local Government 2003 Act to be clear and unambiguous. The accounts of the Council must be compiled in accordance with proper practices, and that in this context means the *Code of Practice on Local Authority Accounting in the United Kingdom*. This Code sets out the proper accounting practices for local authority Statements of Accounts, as required by section 21(2) of the Local Government Act 2003 prepared in accordance with the statutory framework established for England by the Accounts and Audit Regulations 2003 and by sections 41 and 42 of the Local Government and Housing Act 1989.

I therefore consider that in the absence of express provisions to the contrary in the 1933 Act, the Council is obliged to make other charges to the Harbour Undertaking revenue account in accordance with proper practices as set out in the later extant legislation. Local authorities are required, by way of proper practice set out in the Code to make a charge to each of their service revenue accounts and their trading accounts to reflect the cost of fixed assets used in the provision of services or trading activity. These depreciation and capital charges arise out of the local authorities applying "proper practices" when compiling their accounting statements. This charge is designed to show the total economic cost of services or activity and consists of depreciation, together with any impairment charge and notional interest on the asset values, the capital financing charge.

I consider that the depreciation and capital financing charges raised in relation to the Harbour Undertaking are made in accordance with proper practices and are therefore a legitimate charge to the Harbour Undertaking Account. Such charges are "properly chargeable" to revenue.

Has the Council has failed to use all the revenues of the Harbour Undertaking in accordance with article 39 of the Pier and Harbour Orders (Elgin and Lossiemouth and Southwold) Confirmation Act 1933?

Have surplus revenues in the Harbour Undertaking accounts unlawfully been credited to the General Fund?

These two heads of objection are also inter-related. As I have stated before I am only able to consider the transactions in financial year 2004/05 as the audits of the earlier years have been certified as complete. Article 39 of the Order requirements have been set out above. In the 2004/05 accounts, the Harbour Undertaking Memorandum Account as presented originally revealed a surplus for the year of £63,915. This amount is included in the Consolidated Revenue Account and is net of depreciation and capital financing charges. The Council contends that Article 39(7) allow this surplus to be credited to the General Fund to offset the accumulated deficits of previous years.

Article 39 provides both the heading under and the order in which expenditure should be charged or accounted for by the Corporation. The Corporation maintained a General Rate Fund for the purpose of receiving its income and expenditure, a fund that was underwritten by the ratepayers of the area. The Council as successor authority and following the abolition of domestic rates operates a General Fund on the same basis which consolidates all non-housing expenditure so as to determine that amount that is to be met from local taxpayers.

Article 39(1) is no longer relevant as it relates to set up costs of the Order and is now in abeyance. Articles 39(2) to (5) and (8) are not in contention. Article 39(6) is discretionary rather than mandatory and allows the making of payments into a reserve fund (if any) established under article 38 of the Order. Such a fund, if established, is designed to allow a balance of no more than £5,000 to be held on behalf of the Harbour Undertaking against future contingencies should any arise. It appears to be subject to increase with the express sanction of the now Secretary of State, but the Council has asserted that no such sanction has been requested. As such this provision has the effect of preventing the Harbour Undertaking from building up reserves in excess of £5,000. Article 38 makes no further provision dealing with amounts held in excess of £5,000. The Order appears not to have envisaged the effects of inflation or that such excess of income and expenditure would ever occur. The Council has not exercised its discretion to maintain a reserve fund.

Article 39 (7) provides for the harbour revenues to be used for the repayment to the General Rate Fund all moneys paid thereout for the purposes of the Harbour Undertaking. Article 39 is not obviously written on a year on year basis but it is reasonable in my view to make that construction as accounts are made up on an annual basis and as such I consider that this provision quite simply provides authority for the Corporation and now the Council to use revenues it received from harbour activities for harbour purposes in any one year. I do not therefore consider that Article 39(7) in itself provides for the excess of income over expenditure in one year to be applied to deficiencies in earlier years. Where legislators have wanted this to happen they have made express provision accordingly.

However in contrast Article 40 of the Order did consider that there could be deficiencies arising from the activities of the Harbour Undertaking and as such should they arise, the General Ratepayers would fund the balance from the an increase in rates the following year. The recover of a deficiency appears to be a once and for all event, out of the following year's rate call. Put simply the deficit of the Harbour Undertaking is transferred to and met by the ratepayers, now council tax payers, should one arise. No provision is made in the Order for the future offset of local taxation by any form of repayment should an excess subsequently arise other than be being met by the reserve fund.

I consider that the Order was enacted with a view that only limited excess of income over expenditure would ever arise and, if such a situation occurred, the excess could be managed by the use of the reserve fund. In the absence of a specific provision in the Order I have therefore to consider whether the rules on statutory interpretation are of assistance. One of those rules allows a judge to "read in words which he considers to be necessarily implied by the words which are already in the statute and he has limited power to add to, alter or ignore statutory words in order to prevent a provision from being



unintelligible absurd or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute”.

The Council has not exercised its discretion to establish a reserve fund under article 38 and even if it had done so, it has not sought to increase the maximum amount of funds to be retained in it in line with inflation or to a level commensurate with the operating surpluses of the undertaking. Articles 38 and 39 make no provision as to the application of excess funds after all the other provisions of article 39 have been exhausted. I therefore conclude that there is a need to either read words in or to ignore statutory words to avoid article 39 from becoming unworkable or absurd as if excess funds exist they have to be accounted for and applied in some way.

I am aware of other legislative requirements that primarily direct the use of funds to specific purposes before allowing such funds to be applied to other uses (including repayment of accumulated deficits born by general revenue accounts). I also note that such legislation has limited the use of current year excesses to deficits of the previous four years and not the accumulated deficit over longer periods. In the case of the Harbour Undertaking accounts as presented in previous years it has the deficit for 2001/02 of £21,000 was exceeded by the combined surplus of the following two years and so the recent deficit has been recovered.

As such I again come to the view that this would be an unworkable result in that any excess funds would still remain in some form of limbo in the absence an express provision or the creation of a reserve fund with sufficient headroom to accommodate the current surplus. In my view the proper treatment is for any excess of income over expenditure where there is no express provision, is that the excess remains part of the General Fund of the Council. In my opinion this is consistent with the converse provided by the Order that the fund bears the cost of deficits arising from the Harbour Undertaking.

In my opinion should any excess exist once the accounts have been adjusted for the transfer of the Caravan and Camp Site to the General Fund it can be correctly accounted for in 2004/05 in the Consolidated Revenue Account as part of the income and expenditure on Highways Roads and Transport and forms part of the General Fund balance at the year end. In forming this view I am however aware that a final decision on the matter would be one for the Court to make.

Conclusion

Having considered the evidence before me I have concluded that:

- The Council has not received significant revenues and incurred expenditure in the General Fund which should be accounted for in the Harbour Undertaking accounts;
- The Council has correctly applied proper accounting principles in relation to depreciation and capital charges in the accounts of the Council and of the Harbour Undertaking;
- The Council has not unlawfully credited surplus revenues of the Harbour Undertaking to the General Fund;



- The Council has incorrectly applied income and expenditure in relation to the Caravan and Camp Site to the Harbour Undertaking accounts which should be accounted for in the General Fund, subject to an appropriate adjustment for the use of harbour land;
- I am not fully supportive of the argument put forward by the Council in relation to article 39(7) but, taking the Pier and Harbour Order as a whole, along with the general legislative framework applicable to local authorities, I consider that the proper treatment is that, should a surplus for 2004/05 exist once the accounts have been recast, any surplus should be credited to the General Fund.

My reasons for not applying to the Courts

I recognise that there is some ambiguity in the law as a result of later general legislation and accounting framework applicable to the entirety of local authority accounts when compared with the earlier provisions contained in the Pier and Harbour Order when different accounting practices were extant. I have however formed a view that the application of the terms of the Order fail to fully provide for the circumstances that have since arisen and as such I have needed to interpret the legislation accordingly. I conclude that it would be inappropriate for me to apply to the Court for a declaration that an item of account is contrary to law, although the legislation is ambiguous, the Council has accepted my view as to the proper procedures applicable to the accounts, and to apply to the Court would further increase the cost to the public purse.

I have also formed a view that the income and expenditure of the caravan and camp site have been incorrectly allocated in the accounts of the Harbour Undertaking. As the Council has indicated its agreement to amend the accounts I consider it to be inappropriate for me to apply to the Court for a declaration that an item of account is contrary to law.

My reasons for not issuing a report in the public interest

Although I am not required to provide reasons for my decision not to issue a public interest report I have decided to do so. In my view the correction to the accounts is one that can easily be addressed by the Council and will make no overall difference to the financial position of the Council. I also consider that there is only limited public interest in the accounting aspects of this matter and, once corrected, the accounts will not necessarily show that the Harbour Undertaking is in a more favourable financial position. I do not consider it necessary to report to the public that the Council has not fully complied with the requirement to file accounts, restated in Companies Act formats, when the relevant government department is aware of the position and has chosen to take no further action in relation to it.



Your rights

In so far as you have requested that I apply to the courts for a declaration that items of account are contrary to law under Section 17(4) of the Audit Commission Act 1998, you have a right of appeal to the court against my decision. Any appeal must be commenced in the High Court. An appeal must be made by filing an appellant's notice in the prescribed form (Form N161) at the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL, within 28 days, calculated from the date on which you receive this letter that includes my Statement of Reasons. The procedures relating to statutory appeals are set out in the Civil Procedure Rules 1998 (as amended) and supplemental Practice Directions. I suggest that anyone considering an appeal should take their own legal advice.

Yours sincerely



Paul King
District Auditor

cc Mr G Garrod Chief Executive WDC

