



# Grant Thornton

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Dear Mr Biggin

Thank you for your letter of 11 May, received by email regarding Christchurch Borough Council's proposed legal action against the Ministry of Housing, Communities and Local Government challenging the decision of the Secretary of State to approve the re-organisation of local government in Dorset. As I advised in my email of 29 May 2018 setting out the process for submitting a formal objection to the 2017/18 accounts, it is unlikely that I could formally accept your concerns as the transaction referred to did not occur in that year.

I have however considered the points that you raise (shown below in italics) and have the following comments.

*Christchurch Borough Council (CBC)*

*On 24 April 2018 CBC held a full council meeting, part of which was conducted in camera. During the secret session the Council allocated an unknown amount of previously unbudgeted tax payer's funds to a legal action against the Ministry of Housing, Communities and Local Government. This action to take the form of a Judicial Review of the Ministry decision to implement the plan known as Future Dorset which is supported by every council in Dorset except CBC.*

*We fully understand why the discussion of the legal detail was held in secret. However, we believe it was fundamentally wrong to potentially commit hundreds of thousands of pounds of taxpayer's funds to a project in such a way that we, representing some 3,000 of those taxpayers, are unable to tell our members: how much has been allocated; whether that is a reasonable estimate; how it is to be funded; what risks are associated with the expenditure; what effect it will have upon CBC services; what effect it will have upon Dorset County Council (DCC) services in Christchurch.*

Although I appreciate that discussions by the Council excluding the public or press do restrict the ability of electors to be fully informed of the decisions made, paragraph(s) 5, 6 of Part 1 of Schedule 12A of the Local Government Act 1972, enables a local authority to exclude the public or press in circumstances where information in respect of which a claim to legal professional privilege could be maintained in legal

proceedings. In considering its response to the Secretary of State's decision, the Council has determined that exclusion is appropriate in this matter.

#### *The Amount Budgeted*

*It is a fundamental element of Judicial Review that the loser pays everybody else's costs. In this case there are 9 other organisations incurring costs as a direct result of the CBC action: The Ministry; Bournemouth Council; Dorset County Council; Poole Council; all the other second tier councils in Dorset such as West Dorset, East Dorset, etc.*

*Judicial Review is run in two stages: preparing and making a submission to "the gatekeeper"; if the "gatekeeper" gives permission, presenting a case to the High Court. We have taken advice and are advised that the combined costs of CBC and the other 9 parties could amount to £800,000. This then is the approximate amount of our money that CBC is gambling.*

*So far as we can see this expenditure has never been discussed and agreed by the CBC Resources Committee. We can guess that it will be paid out of unallocated revenue reserves – but we don't know that for a fact. If that is the case, then it should have no effect upon CBC front line services other than through intangibles such as the negative effect upon officer morale.*

Although I am not able to share the contents of the confidential papers with you and as you note the matter was not discussed at the Council's Resources Committee, the potential judicial review was discussed in the private part of the meeting of the full Council held on 24 April 2018, reflecting the importance of this matter to the Council. Members were made aware of Council officers' considered estimation of the costs involved in pursuing this course of action, including the likely costs should the Council be unsuccessful, recognising the potential liability for the costs of the Secretary of State and the other Dorset councils.

The Council would meet the costs of the proposed action from its unallocated reserves. It should be noted that the Council has committed to a staged process with consideration of the costs involved should the action be continued.

I appreciate that any potential legal action could impact on staff morale, the Council is aware of the impact that all aspects of Local Government Re-organisation has on staff morale and continues to monitor staff sickness and retention.

#### *Risk Assessment*

*We are not aware that any risk assessment has been carried out and that strikes us as outrageous for such a large unbudgeted sum. It is simply not compatible with sound monetary management.*

*We do know that depending on the nature of the decision being challenged, the court may show a degree of deference to the decision maker, given their democratic mandate, or special expertise; the court may be reluctant to intervene in matters of public policy or in areas where a specialist expertise is required.*

*We also know that even if the court finds that a public body has acted wrongly it does not have to grant a remedy. It might decide not to do so if it thinks the claimant's own conduct has been wrong or unreasonable, for instance where the claimant has delayed unreasonably, has not acted in good faith, or where a remedy would impede a public body's ability to deliver fair administration.*

I agree that while there is no publically available risk assessment document specifically relating the Judicial Review, I am satisfied that the Council has taken appropriate steps to consider risk in its decision making process and has taken relevant advice in determining its course of action.

### *Potential Effect Upon DCC Services in Christchurch*

*DCC is in a difficult financial situation. The last audited balance sheet published showed a trading loss of £31 million and a bottom line of £124 million liabilities. This followed at least four consecutive years of spending exceeding income. We are advised that in 2017-18 DCC spent approximately £4 million more than it received by way of income.*

*DCC, along with several other councils in Dorset, is banking upon the re-organisation associated with Future Dorset to provide a partial solution to its funding deficit. If CBC is successful in derailing Future Dorset, then DCC will be forced to take drastic action. That will involve such things as closing the library, removing all bus subsidies, closing social services in Christchurch and merging it into Ferndown, and so on.*

*Our Council Tax will continue to rise to the maximum allowed by Government (in contrast to plans under Future Dorset which envisage it being frozen for several years to accommodate harmonisation with Bournemouth and Poole).*

*Thus, if CBC lose, we taxpayers will be out of pocket to the tune of several hundred thousand pounds. If CBC win, local services will suffer, and our council tax will be higher than it needs be.*

The position for local councils going forward remains challenging. The reduction in government funding and the increasing demand for services continues to put pressure on council budgets. This pressure has been particularly acute in county and unitary councils with responsibility for delivering social care spending. It should be noted that I am not the auditor of Dorset County Council, however when interpreting local government accounts, it is not possible to apply the same performance measures as for a limited company.

In considering the rationale for undertaking the restructuring of local government services, it is intended that savings will be made in the administration of local government in Dorset potentially allowing more money to be spent on the delivery of front line services. However the reorganisation will not prevent the need for the new councils to continue to identify and deliver significant savings to remain in a financially sustainable position over the medium term. Shadow councils have been set up for the new Bournemouth, Christchurch and Poole (BCP) and Dorset Councils and draft medium term financial plans have been published on the shadow authority websites. For the new BCP Council there is an identified funding gap of between £23 and £24 million over the next three years. In order to close this funding gap, the new Council will still need to make difficult decisions potentially affecting the services you describe.

Council tax harmonization is a matter being considered by the shadow authority. Of the three councils in the BCP council area, Christchurch Borough Council currently has the highest level of council tax. The timing of harmonizing council tax bills across the three council areas has not yet been finalized, however I do agree that should the reorganization not go ahead, council tax rates may remain higher for Christchurch residents.

It is the policy of Christchurch Borough Council to oppose local government re-organisation in Dorset, supported by a majority of residents of Christchurch and although the financial impact of the judicial review process on the rest of Dorset has not been expressly considered in taking this decision, it has been considered by the Council and its residents in reaching this view. The Council's decision to continue its opposition to re-organisation is in accordance with this policy. As previously stated any expenditure incurred in respect of the Judicial Review process will need to be considered in my 2018/19 audit of the financial statements and I cannot at this stage reach a final view, I am however, satisfied that the Council has taken the appropriate advice and followed proper procedures in committing to this course of action.

Yours sincerely

A handwritten signature in cursive script that reads "Alex Walling".

Alex Walling  
Engagement Lead