

# Appendix

1

Part 2

# Training details

2 Nc 4:17 pm

Name	Elwyn Schofield
Job Title	Councillor
Department	Councillors
Payroll No.	Z01032

Training Date	Description	Status	Cancel Reason	Days
28-07-2010	Scrutiny Development Workshop (pm)			1
18-06-2010	Data Protection & Freedom of Info 2-4pm			1
19-05-2010	Child Protection + Vulnerable Adults	Failed to Attend		
28-04-2010	Refresher Code of Conduct (10am-1pm)			1
20-04-2010	A Briefing on The Code of Conduct (am)	Failed to Attend		
13-04-2010	The Role of Scrutiny (pm)			1
23-03-2010	The Role of the Modern Member			1
23-03-2009	Basic Word	Withdrawn	Invited but did not attend	
24-07-2009	Authority as a Health Improvement Agency	Withdrawn	Invited but did not attend	
26-07-2009	Personal & Prejudicial Interests			
23-01-2009	Masterclass - Living Within Our Means			
25-07-2008	Financial Matters	Withdrawn	Invited but did not attend	
21-11-2008	Leading Local Government in North Wales	Withdrawn	Invited but did not attend	
29-10-2008	Chairmanship Skills			
20-10-2008	Senior Executive Briefing - H&S	Withdrawn	Invited but did not attend	
30-09-2008	Leading Local Government In North Wales	Withdrawn	Invited but did not attend	
10-07-2008	Leading Local Government in North Wales			1
09-07-2008	Constitution			1
30-06-2008	Code of Conduct for Members	Withdrawn	Invited but did not attend	
27-06-2008	Data Protection & Freedom of Information	Withdrawn	Invited but did not attend	
24-06-2008	Media Skills For Executive Members			1
17-06-2008	Dennis Reed Planning Session			
19-02-2008	Deddf Diogelu Data a Rhyddid i Wybodaeth			
13-09-2007	managing Risk & Corprate Manslaughter			
21-10-2004	Scrutiny Training for Members			
19-10-2004	Planning Training for Members			1
06-10-2004	Licensing Act Training			1
22-07-2004	Hyffordiant Cynllunio i Aelodau			1
02-07-2003	Ymwybyddiaeth Masnachol			
17-05-2003	After Care Services			
23-05-2002	Members Role in Managing Performance			1
13-09-2001	SCRUTINY GOOD PRACTICE			1
16-05-2000	Ymwybyddiaeth Safle We y Cyngor Sir			1

Total Training Days 14



Eversheds LLP  
1 Callaghan Square  
Cardiff  
CF10 5BT

Tel +44 (0) 29 2047 1147  
Fax +44 (0) 29 2046 4347  
DX 33016 Cardiff  
Web www.eversheds.com

Geraint Edwards  
Managing Director  
Cyngor Sir Ynys Mon  
Swyddfa'r Sir  
Ynys Mon  
ANGLESEY LL77 7TW

Date 3 December 2004  
Your Ref  
Our Ref 4/PWJ/2013  
Direct Dial 029 20 47 7101  
Direct Fax 029 2045 8088  
E-mail peterjones@eversheds.com

Dear Mr Edwards

**INVESTIGATION INTO THE APPOINTMENTS PROCESS IN RELATION TO THE POST OF DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER**

Background:

1. I refer to your letter to me of the 22 November 2004 - attached as appendix 1. I have agreed to undertake the necessary investigation to deal with the two issues that you have raised in the letter of instruction:-
2. To obtain the necessary facts upon which to give you a report outlining the conclusions, I duly attended at your offices on 22nd and 23rd November and interviewed the following, in person, or by telephone:- Lynn Ball; Councillor G.W. Roberts OBE; Councillor E. Schofield; Councillor Peter Rogers; Councillor R.G. Parry OBE; Councillor Keith Thomas; The Leader of the Council - Councillor W.J. Williams; Mr Marc Jones; Councillor Elwyn Schofield; Councillor R.L. Hughes; Councillor H. Eifion Jones; Mr Ross Morgan; Councillor Gwilym Jones, Councillor Bessie Burns, Councillor Eurfryn Davies, Councillor Peter Dunning; Councillor William Hughes.
3. Paragraph 1 of my Brief asked me to investigate the concerns raised by Councillor Schofield with you on 22nd October in relation to allegations of interference at the pre-recruitment process for the above post and in relation to allegations of contamination of that process.
4. In interviewing Councillor Schofield, Councillor Schofield made it clear that he had no personal knowledge of the allegations, but was reporting to me, for my investigation, hearsay evidence that had reached his ears from a 'whistleblower', who he would not identify to me. On the advice of the 'whistleblower', Councillor Schofield visited the office of the Internal Auditor, Mr Marc Jones, who reported that an applicant for the position of Director of Legal Services and Monitoring Officer, Lynn Ball, had been to him, and had reported conversations between herself and Councillor G.W. Roberts OBE,



INVESTOR IN PEOPLE

Eversheds LLP is a limited liability partnership, registered in England and Wales, registered number OC304065, registered office  
Senator House, 85 Queen Victoria Street, London EC4V 4JL  
Regulated by the Law Society. A list of the members' names and their professional qualifications is available for inspection at the  
above office.  
For a full list of our offices please visit [www.eversheds.com](http://www.eversheds.com)

car\_lib1115494411nsbornf



the Deputy Leader. Councillor Schofield understood that these were to the effect that suggestions had been made to her by the Deputy Leader, the gist of which was that her application for the post of Director of Legal Services and Monitoring Officer "would be hers" if she exercised her professional judgement in her capacity as an Officer of the Council in a particular way. Other Councillors to whom I spoke had also heard hearsay evidence to similar effect, though on occasions with different factual detail.

5. Of all the people that I have interviewed for the purposes of this investigation, no one had any direct knowledge of the discussions that were alleged to have taken place between the Deputy Leader and Ms Ball other than the direct participants. No one had any knowledge either of any other 'interference' or other 'contamination with the process' beyond the suggestion that the Deputy Leader had, in varying ways, given an indication to Ms Ball that preferential treatment would be offered her in the job application in return for favourable advice.
6. In the light of this, my investigation has focused on the factual position as to what conversations took place between the Deputy Leader and Ms Ball, and whether any such conversations could constitute interference in the pre-recruitment process or contamination with the appointment procedure more generally. Allied to that, I have also considered whether any improper conduct has emerged which would render it appropriate for you to report the matter to the Commissioner of Local Administration in Wales.

#### The evidence of Lynn Ball

7. I interviewed Ms Ball at length, and she provided me with a full account of her discussions with the Deputy Leader since her application for consideration for the post of Director of Legal Services / Monitoring Officer. Her evidence is that the issue of her job application was discussed by her with the Deputy Leader on three occasions.
8. The first discussion with the Deputy Leader took place on 15th September, at around 3 p.m. A contemporaneous Attendance Note was made of this conversation, which I have seen and which I have discussed with Ms Ball. The Attendance Note was produced, as a whole range of issues were discussed with the Leader and the Deputy Leader which were quite appropriately considered by Ms Ball to warrant an Attendance Note for future reference.
9. Ms Ball gave me evidence that during the course of this discussion, and in particular when discussing the externalising of legal work, she was asked by the Deputy Leader whether she had applied for the Director of Legal Services and Monitoring Officer's post. She confirmed that she had. No further comment was made either by the Deputy Leader or by the Leader in relation to such matters, and there was no further discussion on the point at all.
10. A further discussion took place on 20th September 2004. One of the issues that was discussed on the 15th September was the Standards Committee, and its composition. It had been agreed on 15th September that Ms Ball would draft a letter for the Leader and Deputy Leader to consider, with proposals to be brought before the Standards

Committee on 21st September. A draft letter was duly prepared by Ms Ball (which I have seen), and which was sent out to the Leader and the Deputy Leader on 15 September 2004 for approval.

11. Ms Ball gave me evidence that she received a telephone call in the afternoon of 20th September. Ms Ball was alone when she received this conversation, and was in her office with no-one in the immediate vicinity who would have been able to hear the terms of the conversation. The Deputy Leader was on his mobile phone on his way to a meeting. It was not clear to Ms Ball whether he was accompanied by anyone. The telephone conversation took no longer than 2 or 3 minutes and was focused on approving the draft letter that had been sent to the Deputy Leader for approval.
12. Ms Ball's evidence is, having dealt with that issue, that the Deputy Leader stated that he had been thinking about the fact that Ms Ball had applied for the position of Director of Legal Services and Monitoring Officer, and he suggested that she go to as many Committee Meetings, including full Council Meetings, as possible over the next few weeks to raise profile, and to speak more Welsh. He commented to Ms Ball - "no worries babe". Ms Ball thanked the Deputy Leader for the advice, and there was no further discussion on the matter.
13. Ms Ball produced an Attendance Note of this meeting, but only because she was concerned someone might have been with the Deputy Leader whilst the discussion was taking place; she thought it would be safer to produce the attendance note in case - in due course - she was successful in obtaining the post, and a subsequent complaint might be made by a non-successful candidate who may have felt that an internal candidate had received preferential treatment.
14. Ms Ball gave me evidence that she felt "a little uncomfortable in receiving advice from the Deputy Leader" on her job application for this reason, but whilst she felt "a little uncomfortable" in having received any advice at all on her application, she did not consider that anything improper had happened or that what had been said constituted improper conduct. Whilst she clearly did not approve of the comment "no worries babe", - she did not feel that this was any sort of indication by the Deputy Leader that he was going to try and influence anyone in her favour in relation to her job application. She felt that there would be no reason for him to do so as they had virtually no dealings over the years. Indeed, when she was called upon to give advice in relation to matters in which the Deputy Leader had an interest, her advice was frequently contrary to the standpoint taken on the matter by him. Her evidence was that he nevertheless respected her professional judgement on such issues, and accepted the advice.
15. Ms Ball gave me evidence that the only other occasion when her job application was discussed with the Deputy Leader was when she passed him on the stairs of the Council on the 21st October at lunchtime. She was asked whether she was attending a Committee Meeting in the afternoon and the Deputy Leader commented in passing, "you need to be seen around". Ms Ball took this to be advice, in the same vein as that offered on the telephone on 20th September 2004. She told me that this was a trivial incident

and was a trivial comment which made her feel "a little uncomfortable at worst", but did not constitute inappropriate conduct on behalf of the Deputy Leader.

16. It was put to me by various Councillors who I interviewed that they had heard that the inappropriate discussions took place between the Deputy Leader and Ms Ball when discussing advice as to how to deal with long term sickness problems. I took evidence from Ms Ball in relation to this issue and was told that there had been a meeting with the Deputy Leader to discuss long term sickness absence statistics on 22nd September 2004, but the issue of her application for promotion was not discussed in any shape or form on that date.

#### The evidence of the Deputy Leader

17. I also took evidence from the Deputy Leader as to his recollection of any discussions with Ms Ball in relation to her application for the post. Mr Roberts had a recollection of two discussions with her; on neither occasion had he taken any notes.
18. The first occasion that Mr Roberts could recall the job being discussed was at the meeting with Lynn Ball and the Leader when he asked her in passing whether she had applied for the job of the Head of Legal Services and Monitoring Officer and was told that she had. This appears to be a reference to the meeting held on 15th September. That was the extent of the discussion on that issue which focused on other topics such as the Planning Committee and composition of the Standards Board.
19. The second discussion that the Deputy Leader could recall having with Ms Ball on the issue of her application for the post was a few days later when he telephoned Ms Ball on his mobile phone to approve the contents of the draft letter that he had been sent. The Deputy Leader told me that there was no one with him when he called. Having approved the contents of the draft letter, the Deputy Leader's recollection is that he stated - "all the best with your job application - brush up on your Welsh". When asked by me whether he advised Ms Ball to "get out and about to Committees to raise her profile", he agreed that he probably did make that suggestion. When asked whether he used the words "no worries babe" - he said that he may have done so. This appears to be a reference to the conversation of 20th September.
20. Mr Roberts had no recollection of discussing the job application with Ms Ball on the landing of the Council stairs (as she described above on 21st September) but does recall passing her very briefly when a fire alarm / flood alarm was going off and asking her how she was. The Deputy Leader recalled the meeting on 22nd September when a discussion was had about how to deal with the long term sickness cases, but he stated that the issue of her job application was not discussed at that meeting at all, nor was it discussed thereafter.
21. Mr Roberts gave evidence to me that he is not on the Appointments Committee of the Council and is not involved in any shape or form in short listing or choosing candidates for senior positions such as that of the Director of Legal Services and Monitoring Officer. He gave me evidence to the effect that he had not discussed the post of

Director of Legal Services and Monitoring Officer with any member of the Appointments Committee of the Council.

Evidence of others

22. I spoke to the following individually, either by meeting them, or by having telephone discussions; each and every one of the members of Appointments Panel to whom I spoke (whether or not they attended the relevant meetings when the post was being considered) confirmed that they had not spoken to the Deputy Leader - or indeed anyone else who had sought to influence them either as to who should be short listed for the post, or who should eventually be appointed:-

Councillor Bessie Burns; Councillor Eurfryn Davies; Councillor G.O. Jones; Councillor W.I. Hughes; Councillor Peter Rogers; Councillor Peter Dunning.

23. Indeed, I understand that as Managing Director of the Council you also spoke to the Appointment Panel Members (not all of whom I have succeeded in speaking to), and you have obtained the same confirmation that they had not been contacted or influenced in relation to this post in anyway.

Conclusions to be drawn from the relevant evidence

24. The evidence taken by me from Ms Ball and the Deputy Leader was taken separately and independently. The evidence as to what transpired between the two parties on 15th September (i.e. the confirmation that Ms Ball had applied for the post) was evidence that was identical between the two. The evidence as to what transpired on the telephone call on 20th September 2004 was, in all material respects, evidence that was consistent between the two. The evidence as to what took place on the landing stairs on 21st September is not consistent in that the Deputy Leader cannot recall the post even being mentioned, but in my view this is of no material consequence. The consistent evidence of the two is uncontradicted by any other third party. There is no evidence from a single member of the Appointments Committee that there was undue or improper influence or interference or contamination of the process.
25. Accordingly, it is my view on this uncontraverted evidence that there has been no interference in the pre-recruitment process in relation to the post of Director of Legal Services / Monitoring Officer, and there has been no contamination with the appointment procedures. There is no material which I consider is capable of constituting improper conduct which would render it appropriate for you to report the matter to the Commission of Local Administration in Wales.
26. Ms Ball was clearly concerned that something further might be said at a later date that would have rendered any subsequent appointment of her to the post as capable of challenge on the grounds of internal favouritism. Her concern was more as to what might be said in the future, rather than what had been said in the past. She clearly made Attendance Notes to ward off any such challenge in the event that anything improper was suggested at a later date that would have given a basis for a valid complaint by a disaffected candidate for the post. Her evidence to me was that nothing was said to her



in relation to the post after 21st September. The Deputy Leader's view was that his comments to Ms Ball constituted nothing other than encouragement of staff, and that nothing improper was done by him that would constitute interference with the appointment procedure or improper conduct on his behalf. I agree with that view and do not feel that there is any basis for you to consider reporting the matter further.

27. The matter seems to have escalated by virtue of what happened thereafter. Both Ms Ball and Marc Jones, the Internal Audit Head, gave evidence to me (independently) that Ms Ball had had a discussion with Marc Jones when she recounted the above discussions with the Deputy Leader to Mr Jones. Her evidence was that she had done this with a view to putting down a 'marker' for the same reasons previously indicated - that she would not wish to be subjected to any challenge of her being successful in the post through internal favouritism. From the evidence obtained from Mr Jones, it is clear that he got the impression from Ms Ball that she had been spoken to by the Deputy Leader in terms that gave her an indication that "the job would be hers" if she gave favourable advice on certain topics that were then current within the Council and upon which the Deputy Leader had a strong view.

28. Ms Ball did give evidence to me to the effect that she had relayed to Mr Jones concerns that she held on two issues,

a) that a settlement might be reached in relation to long term sickness severance deals that she was not prepared to countenance on a legal basis and

b) that a more moderate tone might be taken to the giving of legal advice to the Planning Committee.

It seems to me that the impression might have been created in Mr Jones' mind that there was some linkage between Ms Ball's concerns on such matters and the fact that she had had discussions described above with the Deputy Leader in relation to her job application. The evidence however does not support such linkage, and I suspect that any impression that was created in Mr Jones' mind to such effect was as a result of a genuine misunderstanding between himself and Ms Ball that was as result of a lack of clear communication. In good faith, Mr Jones relayed these concerns to Councillor Schofield, when approached by him, in the terms that he understood them to have been communicated to him. It is as a result of that, that the matter seems to have escalated within the Authority to the extent that you considered it necessary to brief me to conduct the present investigation due to the rumour machine generating stories of genuine concern. Whilst this explains the concerns that were expressed by Councillor Schofield to you in correspondence, it does not alter the fact that the base evidence does not support a suggestion of improper conduct that would necessitate a report to the Commission for Local Administration in Wales.

The possible tainting of the process and the issue of whether this Appointments Committee can proceed

29. The final ground of my Brief is to consider whether the appointments process has been tainted in some way which would render it inappropriate to proceed with the current

appointment process, and the currently constituted Appointments Committee. I do not believe that any of the evidence which I have outlined above taints the appointments process in any way to render it inappropriate to proceed.

30. One issue however was raised with me by Councillor Schofield which would fall to be considered within this aspect of the Brief. It was suggested by Councillor Schofield that the current appointment process has been 'tainted' to the extent that the Council has not processed the appointment in a manner that is consistent with the constitution. Councillor Schofield, and others, made me aware of the fact that he is of the view that the post of Director of Legal Services and Monitoring Officer should be severed; accordingly Councillor Schofield had an issue that the job description of this post, when advertised, was an issue for debate, and that such debate had not taken place by the Appointments Committee whose job it was - says Councillor Schofield - to consider such matters.
31. My understanding, having spoken to Mr Ross Morgan, is that the post was advertised by himself, in conjunction with yourself and a member with the Human Resources Portofolio.
32. Mr Morgan told me that there was an Appointments Committee Meeting on 4 October, but that that Committee Meeting did not transact any Committee Business. A second Committee was convened for the 13th October. At that meeting, it took some time to discuss the constitutional issues relating to appointing the Chair, but Councillor Richard Owen eventually did take the Chair. Certain members of the Committee, including Councillor Schofield, absented themselves from the meeting. The meeting proceeded to approve the job description as drafted and advertised as set out at paragraph 29 above. I am told (although have not yet seen) that the minutes of the meeting record that fact. The third Committee meeting on 5 November was adjourned on advice of the Managing Director pending my investigation.
33. I have been provided with a document which I understand is the current constitution of the Council including all updated pages reflecting amendments and additions approved by the County Council to date. I also understand from Mr Morgan that the post of Director of Legal Services / Monitoring Officer is not classed as a Corporate Director post, and for recruitment purposes is classified as Head of Service level.
34. Clause 4.10.2 of the constitution on page 196 provides that the Council will draw up a statement specifying the duties of the officer concerned and any qualifications to be sought in the person to be appointed. There is no specific delegation of that power to the Appointments Committee.
35. The job having been advertised, the delegation of powers to the Appointments Committee appears at Clause 3.4.9 (page 47A) and Clause 4.10.3 (page 196A). Clause 3.4.9 states that on the appointment of a Head of Service, it is the Appointments Committee that determines who shall be short listed for an interview and to determine the terms and conditions of appointment taking into account the views of officers. The clause does not empower the Committee with the advertising of the post.

36. It is conceivable that if the Council, acting through its officers, have advertised the post in a way that the Appointments Committee are not prepared to endorse insofar as determining terms and conditions of appointment are concerned, the situation could exist that no appointment could be made without re-advertisement. However, in this case, the evidence that was given to me by Mr Morgan is that the Appointments Committee, which was quorate even after certain members had left, approved the terms and conditions as advertised, and therefore the divergence that could exist in theory does not exist in practice following ratification by the meeting of the job description drafted by the officers.
37. Accordingly, I do not think there is anything unconstitutional in the way that the appointments process has been pursued to date. There are therefore no grounds, in my view, that would render inappropriate in any way the continuance with the current appointments process and the currently constituted Appointments Committee through to a conclusion.

Yours sincerely

Peter Watkin Jones  
Partner  
For EVERSHEDES LLP



Our ref: 1082/200501041

Ask for: Catherine Crompton

Your ref:

☎ 01656 641150

Date: 22 March 2007

✉ Catherine.crompton@ombudsman-wales.org

Ms Lynn Ball  
Monitoring Officer,  
Isle of Anglesey County Council  
Council Offices  
Llangefni  
Anglesey  
LL77 7TW



Dear Ms Ball,

Allegation of breach of the code of conduct made against Councillor E Schofield

I refer to earlier correspondence regarding the above mentioned allegation made by you against Councillor Schofield. I am writing to advise you that having regard to Councillor Schofield's health problems, the Ombudsman has decided to conclude the investigation.

I enclose a copy of a letter which the Ombudsman has sent to Councillor Schofield's solicitors. You will note his finding that no action be taken in respect of the matters investigated.

I am also notifying the outcome to your Council's Managing Director, the Deputy Monitoring Officer and to other persons interviewed during the investigation.

Yours sincerely

Christine Perry,  
PA to the Ombudsman

Our ref: 1082/200501041

Ask for: Catherine Crompton

Your ref: MJM/CAC/36663.1.2

☎ 01656 641150

Date: 22 March 2007

✉ Catherine.crompton@ombudsman-wales.org

Mark Manley,  
Brabners Chaffe Street,  
Solicitors,  
1 Dale Street,  
Liverpool,  
L2 2ET

Dear Mr Manley,

Allegation of breach of the code of conduct made against your client Councillor E Schofield by Ms Ball of Anglesey County Council

I refer to earlier correspondence regarding the above allegation, and in particular to Mrs Crompton's letter dated 26<sup>th</sup> September 2006 in which she enclosed a draft report on the investigation. Copies of the draft report were also sent to Ms Ball and to other persons who were interviewed during the course of the investigation. Everyone who wished to submit comments, apart from Councillor Schofield, has done so. However, extensions of time in which to submit comments were agreed with you on Councillor Schofield's behalf in view of his health problems.

To date, Councillor Schofield has not been able to submit any comments on the draft report, and I understand that his health problems are continuing. I also understand from the Council that it has considered Councillor Schofield's continuing membership in view of his absence from public life since the end of September 2006, and has agreed to allow him to continue in office without calling a by-election for a further six months.

I have reviewed the position in relation to the investigation in the light of the above. The allegations as made were supported by evidence, and the evidence

Cont ....

Mark Manley,

22 March 2007

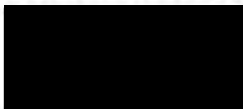
was largely confirmed by the investigation, although I note that this is disputed by Councillor Schofield. Because it has not been possible for me to receive and consider his comments on the draft report, I do not consider that it would be appropriate to finalise and issue the report.

However, I have decided that the investigation should be concluded without further delay. I have decided that the appropriate course in the circumstances, having regard to Councillor Schofield's continuing illness and the length of time which has passed since the events which gave rise to the allegations occurred, is that no action be taken in respect of the matters which are the subject of the investigation. This represents my formal finding under Section 69(4)(b) of the Local Government Act 2000.

As required by the Local Government Act 2000, I am notifying the Council's Monitoring Officer, Ms Ball, of my decision by sending her a copy of this letter. I am also notifying the Council's Deputy Monitoring Officer, and the other persons who were interviewed during the course of the investigation.

I am writing to you separately regarding the allegation by Mr G Edwards.

Yours sincerely,



Adam Peat,  
Ombudsman

Our ref: 1082/200501073

Ask for: Catherine Crompton

Your ref:

☎ 01656 641150

Date: 22 March 2007

✉ Catherine.crompton@ombudsman-wales.org

Mark Manley,  
Brabners Chaffe Street,  
Solicitors,  
1 Dale Street,  
Liverpool L2 2ET

Dear Mr Manley,

Allegation of misconduct made against your client Councillor E Schofield by Mr Geraint Edwards

I refer to earlier correspondence regarding the above allegation, and in particular to Mrs Crompton's letter dated 13<sup>th</sup> October 2006 in which she enclosed a draft report on the investigation. Copies of the draft report were also sent to Mr Edwards and to other persons who were interviewed during the course of the investigation. Everyone who wished to submit comments, apart from Councillor Schofield, has done so. However, extensions of time in which to submit comments were agreed with you on Councillor Schofield's behalf in view of his health problems.

To date, Councillor Schofield has not been able to submit any comments on the draft report, and I understand that his health problems are continuing. I also understand from the Council that it has considered Councillor Schofield's continuing membership in view of his absence from public life since the end of September 2006, and has agreed to allow him to continue in office without calling a by-election for a further six months.

I have reviewed the position in relation to the investigation in the light of the above. The allegations as made were supported by evidence, and the evidence was largely confirmed by the investigation although I note that this is disputed

Cont ....



Mark Manley

22 March 2007

by Councillor Schofield. Because it has not been possible for me to receive and consider his comments on the draft report, I do not consider that it would be appropriate to finalise and issue the report.

However, I have decided that the investigation should be concluded without further delay. I have decided that the appropriate course in the circumstances, having regard to Councillor Schofield's continuing illness and the length of time which has passed since the events which gave rise to the allegations occurred, is that no action be taken in respect of the matters which are the subject of the investigation. This represents my formal finding under Section 69(4)(b) of the Local Government Act 2000.

As required by the Local Government Act 2000, I am notifying Mr Edwards of my decision by sending him a copy of this letter. I am also notifying the Council's Deputy Monitoring Officer, and the other persons who were interviewed during the course of the investigation.

I am writing to you separately regarding the allegations against your client by Ms L Ball.

Yours sincerely,

A black rectangular redaction box covering the signature of Adam Peat.

Adam Peat  
Ombudsman



## CRAIGWEN

These notes contain my recollection of a meeting held on the 8<sup>th</sup> July 2008. In the office of the Head of Property Services concerning the acquisition of the above property. They have been prepared at the request of Council's Monitoring Officer and have been checked by the Head of Property Services.

The meeting was attended by:

Councillor Phil Fowlie	(PF)
Councillor Elwyn Schofield	(ES)
Mr Mike Barton	(MB)
and Myself	(AC)

As I understand it the meeting was convened at the request of ES as Portfolio Holder for Property Services. Prior to any discussion of "Craigwen" certain issues concerning Gallows Point, Beaumaris were discussed with Dafydd Jones of Anglesey Boat Company present.

At the conclusion of the considerations of Gallows Point, Dafydd Jones left the meeting and the Craigwen issue was discussed. The following were the main subjects of discussion.

1. ES referred to his personal interest in the purchase of Craigwen. He commented that his nephew had first drawn his attention to the sale by auction. He commented that he had been accused of bidding against the Council in the hope of acquiring the property in order to "hold the Council to ransom" over access to Council land at the rear in the hope of making a significant personal gain. He wanted to make it clear that this had not been the case and that he had not been aware that the Council was bidding at the auction.
2. ES suggested that there had been a rush by the Council to acquire the property and he could not understand why the "rush" had been necessary. AC and MB pointed out that the only "rush" from their point of view related to being ready to proceed in time for the auction date.
3. ES asked AC if he had been aware of and asked to advise on certain covenants relating to the property prior to the auction. AC confirmed that he had. ES appeared somewhat surprised at this as he considered that the covenants prevented the Council from utilising the property for the intended purpose. ES had a transcript of the particular covenant concerned which I recalled was contained in a copy letter from the Council's External Auditors. AC respectfully disagreed and commented that he had advised that the covenant would probably not prevent the use of the property for the purpose of providing access to other Council land. AC then explained his reasons for that advice in some detail. ES did not accept AC's reasoning.
4. AC further explained that in any event he was also of the view that the covenant was no longer enforceable and explained his reasons for that view. Indeed AC informed ES that HMLR had confirmed acceptance of the case for removal of the covenant from the title register. ES expressed concern over the removal of the

covenant which he considered to be enforceable by the original covenantee's successor / descendants. AC explained the general principles of law in relation to enforceability of covenants by successors in title and how those principles applied (or otherwise) in this case. Es suggested that he felt the Council had a "moral" obligation not to contravene the covenant. AC explained that his role was to advise on the Council's "legal position" and not its moral responsibilities. The land was now covenant free but clearly the Council was in a position to decide whether to proceed with its proposals or not.

The meeting concluded with a request by ES that he be provided with copies of all correspondence with HMLR leading to the removal of the covenant from the title register. MB and AC agreed to provide copies.



# Attendance Note

For Legal Services Manager

Matter reference: CC-011132-LB  
Matter name: Property Acquisition at Auction 19.7.2007 - Craigwen, Amlwch  
Attended by: Lynn Ball  
Attendance with: Derrick Jones (Managing Director)  
Gareth Jones and Ian Howse (PWC)  
Attendance on: Wednesday 17<sup>th</sup> September 2008 (1:30 pm)  
Recorded on: 17 September 2008  
Subject: PWC's investigation into the acquisition of Craigwen

---

Following a very brief discussion about this afternoon's Audit Committee, Ian Howse confirmed that he and Gareth Jones had just come from a long meeting with the Cabinet, in the Leader's Office, concerning Craigwen.

Ian Howse said that the Cabinet was putting pressure on PWC in relation to their draft report and that they are being threatened with judicial review proceedings.

The Cabinet made it clear that they wished to use PWC's report to take disciplinary action against the MD and the MO.

The Cabinet asked for, and was given, advice by PWC about the legal protection afforded to the statutory officers. They also explained to us, in summary, the advice which they had given to the Cabinet on this point regarding the appointment of an independent investigator etc.

PWC said that they were having difficulties in getting the Cabinet (in particular Councillor Schofield) to understand the limits of PWC's duties and responsibilities under the code.

PWC was told that the relationship of trust had broken down between the Cabinet and the MD and the MO.

The Cabinet asked for guidance on their right to obtain legal advice independent of Council Officers.

I queried this and asked whether they meant in relation to Craigwen?

Ian Howse said that they were referring to all legal advice, on every issue, because of the breakdown in the Cabinet's relationship with the MO.

I advised them that I was not aware of any difficulty in relations with any Councillor other than, perhaps, Councillor Schofield.

Yesterday I, and others, had advised at a briefing meeting in advance of the full Council and on the previous day I met with the Leader to brief him about forthcoming Court proceedings which might result in his being approached by the Claimant and/or the media.

There was no indication of any problem.

I also advised them about four previous issues involving Councillor Schofield, namely: judicial review and costs against him following a challenge to the Standards Committee and the former Monitoring Officer; my appointment as Monitoring Officer and the Evershed's investigation as a result of a complaint from Councillor Schofield; Stanley Crescent, and complaints that were lodged with the Ombudsman against Councillor Schofield by me and the former MD.

Ian Howse said that all the Cabinet painted a very negative picture of relations between the Cabinet and the MD and the MO and he said that he did not know how we would be able to overcome this. He said that the "poison" was being spread by Councillor Schofield and that PWC had formed the view that this was personally motivated.

He said that he could appreciate that we were in great difficulties and that he would not have either of our jobs for "a million pounds".

PWC said that they did not want their findings to be liable to challenge by judicial review, although I suggested that, from our point of view, the best course of action would be to have a High Court Judge look at it. We would welcome that.

PWC confirmed their code responsibilities and said that they would now be seeking independent legal advice on the 3 issues, namely: the covenant, the Section 5, and whether or not Councillor Schofield is now breaching the Code of Conduct and, if so, what are PWC's responsibilities in relation to that.

The MD suggested that the Council bring in an independent investigator to look at it. I said that Councillor Schofield apparently "rubbished" the Eversheds investigation because I had worked for them as a trainee solicitor, even though I was not acquainted with the investigator. I was advised by the former MD that Councillor Schofield claimed that the investigation had no credibility because the instructions were given by the Managing Director. Whatever we do, unless PWC's findings serve Councillor Schofield's purpose, it will be rejected.

Ian Howse took with him a copy of my comments on the draft report. I confirmed that, whilst I still maintain the view that the "consultation" with the Acting Section 151 was sufficient, I told him that David Elis-Williams felt strongly that there should be a recommendation that, in any future circumstances like this, the Section 151 should be specifically included in any formal discussion/decision.

Ian Howse and Gareth Jones then left the meeting to attend the Audit Committee and said that they would be in touch as soon as possible.





# Attendance Note

For Legal Services Manager

Matter reference: MD-014326-RWJ  
Matter name: Proposed Ombudsman Complaint against Councillor Elwyn Schofield (2010)  
Attended by: Robyn Jones (RJ)  
Attendance with: Councillor Clive McGregor (CM), Councillor Bob Parry (BP), David Bowles (DB)  
Attendance on: 5 October 2010 @ 10am – Leader's Office  
Recorded on: 12 October 2010  
Subject: Attendance Note

---

RJ explained that the meeting was to enquire of the Councillors as to whether or not they were aware of certain allegations that Councillor Schofield (ES) had made. Certain allegations had been made by ES to DB and RJ had prepared a list of them. He intended to go through that list and to see whether CM and/or BP could confirm that those were allegations that ES was making before August 2009.

(A copy of the list of allegations with RJ's annotations made during the meeting is attached to this note.)

Both CM and BP confirmed that ES had alleged that members had not been allowed to see a draft of the Auditors' letter. CM indicated that the letter he had written to Derrick Jones in December 2008 comprised of two parts. He did not have a copy to hand but would be able to identify those two parts if he received a copy. CM confirmed that he wrote one part of the letter and that ES wrote the other part.

Both CM and BP confirmed that ES was critical of David Elis-Williams in respect of the issue of travel costs of members. This probably related to the trips to Cardiff and Barry.

Both CM and BP confirmed that ES made allegations that the Opposition were better briefed about the Paragraph 85 letter and the rebuttal than were they as Ruling Group. His allegation was that Lynn Ball was doing the briefing. CM indicated that he was 90% plus certain that it was ES who was advancing the case against Lynn Ball.

Both CM and BP confirmed that ES hinted at issues regarding the competence of both Lynn Ball as the Legal Officer and David Elis-Williams as the Finance Officer. CM likened ES's attitude to a "dripping tap". BP confirmed that ES gave the impression that he knew better than David Elis-Williams on issues relating to finance. As regards the allegations made by ES that Lynn Ball leaked Ruling Group documents to the Opposition and that officers were more helpful to the post 2008 Opposition on FOI requests than they were to the pre 2008 Opposition, both CM and BP confirmed that these were general allegations circulating within the Ruling Group.

CM confirmed that in January 2009 the draft WAO letter had been received and the draft final report was to be published. ES was very much against the release of that final report. ES supported Councillor Fowlie in opposing the release. It was also ES who had said to Councillor Fowlie not to release the Paragraph 85 letter pursuant to the request.

CM confirmed that following the rebuttal to the Paragraph 85 letter it became apparent that there was a significant gap between Officers and Members in the Ruling Group. He had then suggested a referral of the matter to the Police as a means of trying to end the matter. However the Police replied within 2 weeks, having consulted with the CPS, indicating that it was not a matter for them.

CM indicated that this had been a difficult time with there being a cabal in the Executive wanting to pursue these matters as compared to the remainder of the Executive.

Both CM and BP confirmed that ES had made an allegation that Lynn Ball had threatened PwC with legal action in respect of Craigwen (the "tanks on the lawn" issue).

RJ handed to both CM, BP and DB a copy of the attendance note made by Lynn Ball of a meeting on 17<sup>th</sup> September 2008. A copy of that attendance note is attached. (RJ took all copies back into his custody before moving on to the next item) Having read the attendance note, CM confirmed that it accurately reflected the tenor of the meeting that had been had. ES was the instigator of these issues and he was driving it. BP indicated that ES wanted his finger in everything.

Both CM and BP confirmed that ES frequently made the allegation that the Council had no legal right to be at the auction and to bid for Craigwen. ES believed this because the original decision was flawed.

Both CM and BP confirmed that ES was alleging that the Craigwen purchase was illegal. CM indicated that ES alleged that Lynn Ball should have done a Section 5 Report on the Craigwen purchase but neither CM nor BP was aware of any allegation by ES more generally in respect of Lynn Ball and the use (or non-use) of Section 5 Reports.

Both CM and BP could confirm that ES made allegations that Lynn Ball was not fit for purpose and had personal weaknesses. They also confirmed that ES made allegations that Lynn Ball released information to the Opposition and, specifically, that she had too close a working relationship with the Opposition.

Whilst neither CM nor BP recalled any allegations by ES that Lynn Ball had too close a relationship with Councillor Gareth Winston Roberts or that she had interests which prevented her from being involved in recent Council issues, they do both recall allegations by ES with regard to the appointment of Lynn Ball as Monitoring Officer. ES regularly alleged that Lynn Ball had been given the job because Councillor Gareth Winston Roberts said (or words to this effect) "you will get the job, babe, if you speak Welsh".

Both CM and BP were aware that ES made allegations that Lynn Ball had got the then Ruling Group "off the hook" prior to 2008. This related specifically to the Craigwen purchase.

BP recalled that in particular ES took against Derrick Jones because of a comment he had made in the context of the 2008 Budget. He had said something to the effect that keeping Council Tax rises down to 1.5% would ensure that Councillor Gareth Winston Roberts would be the Leader for the next 10 years. For some reason ES had taken against Derrick Jones for making that comment.

Both CM and BP confirmed that ES would make allegations about the improper interference in the appointment of Lynn Ball as Monitoring Officer (please see the above note). ES would also make the allegation that Eversheds (who had investigated the appointment) were

not an independent investigator. Both CM and BP also confirmed that ES would make allegations that Lynn Ball was bias against ES following him having blown the whistle and being the complainant on her appointment as Monitoring Officer.

Both CM and BP indicated that ES also made allegations which were critical of the use by the Council of Alan Carr as Property Solicitor. ES would often query the costs incurred by Alan Carr. In particular, CM indicated that ES raised objection to a file note prepared by Alan Carr. This was of a meeting at which ES, Councillor Bryan Owen, Mike Barton and Alan Carr had been present. This was a meeting with regard to the covenants that were on the Craigwen property. ES made allegations and objection to the file note prepared by Alan Carr. ES alleged that the file note was an afterthought and was intended as a cover-up. The allegation was that the note both misrepresented what had actually happened at the meeting and that it was also a fabrication.

CM confirmed that ES would regularly make allegations that he had been poorly treated when it was others who were the real problems. In this context the others would include Councillor Chorlton and John Arthur Jones.

Both CM and BP confirmed that ES had alleged that Lynn Ball had prepared documents for Councillor Chorlton as part of an Ombudsman complaint. CM indicated that this was the complaint that John Chorlton had made against Aled Morris Jones.

Both CM and BP confirmed that ES had made allegations against Lynn Ball that she had challenged him over his illness and the Ombudsman complaint and had made public an allegation that he was deliberately ill. They were not sure that this was as a result of the appointments complaint but both confirmed that the allegation had been made. ES had a go against Lyn Ball in respect of the "toilet gate" matter. That issue was a painful matter for ES. He alleged that he had received a telephone call at home from a journalist at the BBC asking whether or not it was true that he was suffering from cancer. CM indicated that ES spoke "glowingly" of Julie Openshaw as Lynn Ball's predecessor. BP then added that it was known that ES did not get on with Julie Openshaw.

CM confirmed that he was aware that ES had made allegations that Lynn Ball had written documents on behalf of John Arthur Jones. CM indicated that this was for John Arthur Jones' complaint against him from July 2009. The allegation was that Lynn Ball had written to indicate the possibility of there being an appeal from an initial decision by the Ombudsman.

Both CM and BP confirmed that ES would allege that Lynn Ball was doing things to help the Opposition. This would be general knowledge amongst the Ruling Group and ES was preaching this allegation.

Both CM and BP confirmed that ES was making allegations that the Council could not move forward whilst both Lynn Ball and David Elis-Williams were employees of the Council. CM confirmed that Steve Thomas of WLGA would also be able to confirm that.

CM confirmed that recently there would have been bad blood between ES and Councillor Robert Lloyd Hughes. Councillor Hughes was present at the meeting with PwC. CM confirmed that ES was "really going for it" in the first 12 months after May 2008.

Time in meeting – 45 minutes  
Time preparing this note – 20 minutes  
RJ - 05/10/10 @ noon

Allegation	CM	BP
Members had not seen draft of auditor's letter	✓	✓
Officers' rebuttal of paragraph 85 letter contained fabrications – critical of DEW and LB for producing rebuttal		
Critical of DEW re travel costs of members	✓	✓
Opposition better briefed about paragraph 85 letter and rebuttal than were ruling group – LB doing this	✓	✓
Competence of legal officer (LB) and finance officer (DEW)	✓	✓
Unable to draw line as far as legal officer was concerned – complaint she made to police		
LB leaks ruling group documents to opposition (JC)	?	?
Officers more helpful to post 2008 opposition on FOI requests than to pre 2008 opposition	?	?
LB threatening PwC with legal action re Craigwen ('tanks on lawn' letter)	✓	✓
LB lying over Craigwen and had conflicts of interest	X	X
No legal right for Council to be at auction – <i>decision flawed</i>	✓	✓
LB misuse of section 5 – used to protect opposition and threaten ruling group		
Craigwen purchase illegal	✓	✓
LB not fit for purpose and has personal weaknesses	✓	✓
LB releases information to opposition – <i>too close working relationship</i>	✓	✓
LB and GWR too close in working relationship		
LB had interests which should have prevented her from being involved in recent Council issues		
LB got ruling group 'off the hook' prior to 2008 – <i>Craigwen</i>	✓	✓
Improper interference in LB's appointment as MO	✓	✓
Eversheds not independent investigators of LB's appointment	✓	✓
LB biased against ES following his whistle-blowing	✓	✓
Critical of use of Alan Carr – tried to catch ES out in a meeting – <i>spang words</i>	✓	✓
ES poorly treated when JAJ and JC were the problems	✓	✓

*regularly.*

*Alan @  
real -  
Jerald -  
penalty*

LB prepared documents for JC - Ombudsman complaint - LB's motive was to get at ES	✓	✓	✓
LB challenged Ombudsman's view of paragraph 85 letter because of her relationship with opposition	?	?	✓
LB challenged ES over his illness and Ombudsman complaint and made it public that he was deliberately ill (all due to appointment complaint -?)	✓	✓	✓
LB had written JAJ's document - JAJ's complaint against Com July 07	✓	✓	✓
LB leaked information to JAJ so that he could make allegations in the press	✓	✓	✓
LB doing things to help opposition - general knowledge - ES presiding etc	✓	✓	✓
Documents made public to Standards Committee by LB to embarrass ES and do him harm	✓	✓	✓
Council cannot move forward whilst LB an employee - need an investigation	✓	✓	✓

+ DEW



Mr. Alan Morris  
Wales Audit Office,  
24 Cathedral Road  
CARDIFF;  
CF11 9LJ

18<sup>th</sup> December 2008

Dear Mr. Morris

**Re: Annual Audit Letter**

As promised please find herewith the combined responses of my Executive to your draft Annual Audit Letter. We came into power following the May 2008 Elections, since that date my Executive and I have not received any assistance or guidance to help us govern Anglesey from the Corporate Management Team. We were aware of member conflict during the last administration and naively thought that our united group would provide strong and positive Political leadership to the Authority. Events have demonstrated that this is not so. In fact there is a feeling that the Officers would welcome some if not all of the Executive to fail. We have observed during the last seven months that the Corporate Management Team do not like Political challenges and questions and perceive strong questions to further scrutiny as being member/officer conflict.

Since May 2008 a number of issues which have been raised in your draft letter were never raised by the Corporate Management Team with either myself, the relevant Portfolio Holder or any member of the ruling group. I refer to the Ombudsman's damning report on Housing Benefit, the overspend in the Social Services Budget and the draft Fleet Management Report. We had raised the matter of an absence of an Asset Management Plan at a very early stage in our Executive Meetings. We have also raised the question of poor Corporate Governance but are seen to be challenging the Officers who then respond with references to the Constitution and to delegated Powers.

We did reconsider the School Rationalisation programme and postponed the recommendations which had been arrived at in respect of a segment of the Local Authority area. We believed that the Rationalisation programme should apply to the whole of the Local Authority area and this is now progressing. My Executive have no problem in taking unpleasant and unpopular decisions for the greater

good of the Authority. We do not expect to be praised for our efforts but a little assistance would be appreciated in delivering our programme to the Electors of Anglesey. In May 2008 they purged the previous administration at the Polls and if we fail to deliver value for money and a decent Council service then in 2012 the same fate could befall us.

The Corporate Management Team had since 2004 been subjected to considerable pressure from some of the ruling executive to do things their way. Events during 2007 clearly demonstrate that there was very little integrity in some of the decisions made. Personal attacks by way of correspondence was evident. Some of those statements have by now been proved to be totally malicious and not what one would expect from Senior Officers of the Authority

Our Human Resources Department is failing, there is a serious issue with sickness within the Authority, yet despite several of the Executive bringing this to the Managing Director's attention there has been no movement to resolve these serious issues of Personnel Management. We have noted with interest your annual letter to Denbighshire in which you state that the Authority's Corporate Governance arrangements are insufficient to deliver the scale of improvement needed to achieve its priorities. This despite leadership at the Political level being stronger and more strategically focused than in the past, senior officers are not consistently providing the level of direction and corporate discipline needed to deliver the Council's improvement ambitions. One cannot help but feel that we are experiencing the same inertia. The draft annual letter for Anglesey however implies the opposite. We did turn down the opportunity of partaking in a workshop which Wales Audit Office had arranged (but spent the time explaining our problems and difficulties to Non Jenkins and Rod Alcott). I would hope that our reasons for doing so are now clearer to you.

Every member of the Executive attended a two day workshop facilitated by Professor Zoe Radnor of Warwick Business School in October 2008. There was a full and frank discussion about our hopes and aspirations, culminating in a vision for 2011. Poor working relationships between the Executive and the Corporate Management Team was given a thorough airing and Professor Radnor left the workshop enlightened as to the causes of the conflict by the body language of some of our Senior Officers.

As part of our efforts to improve Corporate Governance we have arranged to undertake an Appraisal for the Managing Director and we have asked him to prepare a draft report on reorganising the corporate structure to resolve the lack of corporate management that is referred to by the auditors in paragraph 94 to 96. We are concerned that the Managing Director and the corporate management team have not shared the auditor's assessment of corporate arrangements and their response (final report presented to Auditors in November 2008) to it with us. We are also concerned about our IT strategy and the lack of Project Management across the Authority.



I have previously mentioned the Social Services overspend which was not raised with this Executive until some time into the new financial year when it was very obvious that the current Financial year for this department was also likely to show a substantial overspend on its budget. This is slightly in contradiction to the comments in paragraph 4 that there was no material weakness in internal financial control. Much the same happened in respect of the Ombudsman's report on Housing Benefit. No mention had been made that there were difficulties within the section until the publication of the damning report. A draft Fleet Management Report was prepared in May 2008, this was not discussed with the Executive at all and we had no input into any responses you may have received before publishing your final report in the last few days.

You may feel that this Executive has laboured the "Graigwen" Amlwch issue, I would contend however that the manner in which this property was purchased and the role played in the saga by members of the Corporate Management Team displays a lack of honesty, integrity and verges on being criminal malfeasance in public office. This may explain why my Executive are so concerned about the issue. I am including herewith the response to this particular issue.

Dealing with paragraphs 16 to 22 of the Draft Annual Letter, we raise the following concerns and queries:

Para 19

- 1.1 You note the unanimity of the Executive's decision on 16/07/07 and 10/09/07, suggesting that it is a strong indication of the decision they intended to make. However, you appear to ignore completely the obvious material impact that knowledge of the existence of a restrictive covenant would have had
- 1.2 This factor would naturally have raised doubt and concern and would have been extremely likely to trigger further queries and deeper scrutiny from Members.
- 1.3 There can be no certainty at all as to the decision the Executive would have made had Officers provided this crucial and easily accessible information and had the Executive not been unnecessarily forced by Officers to make a decision under the emergency process.
- 1.4 We therefore contend that your conclusion in relation to what decision the Executive would have made is flawed and is actually no more than a guess. The facts merely support a conclusion to the effect that when forced to make an emergency decision by Officers and whilst not informed of significant relevant facts by Officers, the Executive (unsurprisingly) agreed with the proposal that was put to them by Officers. We would have expected your conclusion to strike a very different balance and to also comment upon whether the democratic process functioned as it should in this case.

*Face orange's  
Standards Comtee  
Review Plan*

- 1.5 An objective layman would also expect significant concern to be expressed that Officers had not actually carried out a basic level of due-diligence that Members should reasonably be able to expect and assume from the professionals advising them
- 1.6 A separate concern relates to the unnecessary misuse of the emergency process and the detrimental effect on proper democratic scrutiny. As Members, we rely on advice from Officers on a daily basis and it is of fundamental importance that all such advice is objective and transparent if Members are to be effective in their elected role. Transparency and objectivity are also foundation stones in the bond of trust that must exist between elected representatives and Officers if we are jointly to serve the public effectively and appropriately. You will doubtless appreciate that this case has brought to light practices and issues which are harmful to the confidence Members naturally place in Officers. The position of trusted expert advisors to elected representatives is a privileged one with considerable influence, so it is essential that the External Auditor is able to explicitly re-assure Members and their Electors. We look to you to make recommendations that will safeguard that objectivity and transparency in the way Officers work and where issues arise, to tackle them robustly in the interests of the Electors.
- 1.7 We would ask that you modify this paragraph to reflect that the evidence merely reflects the decision the Executive made with the partial information they were given by Officers and the very limited time they were given by Officers to consider before "deciding". We would also ask that you state clearly the fact that it cannot be said with any certainty how they might have determined, had they had the relevant facts and the proper time to apply appropriate scrutiny and questioning.

**Para 20**

- 1.8 Reference is made in this paragraph, that the Council has substantive legal powers to undertake the purchase of property by auction but you have then left this general and superficial point entirely without the necessary context.
- 1.9 The Council's Constitution at para 3.5.2.5 states that "The Officer with delegated powers or in a case of doubt the Managing Director can take any action in consultation with the appropriate member of the Executive or Regulatory Committee Chairperson and/or Vice Chairperson between meetings which she/he considers urgent; **which does not involve expenditure for which there is no budget provision;** and which conforms to the Council's policies subject to the details of such action being reported for information to the next appropriate meeting of the Executive or Regulatory Committee"
- 1.10 In this case there is no doubt that no specific budget provision had been made for the purchase of Graig Wen- it appears in no budget book nor financial committee paper prior to the date of the Auction and the above

paragraph only allows any action not involving expenditure where no budget provision has been made.

- 1.11 Further the previous Standing Orders are also consistent with this position and I think add further light – stipulating very sensibly to avoid conflict that even in cases where Officers may have delegated powers, where they refer a matter to a Committee/Sub-Committee for a decision, then they lose any delegated power and sovereignty rests with the Committee/Sub Committee and Officers cannot then wrest back the decision making power on that item.
- 1.12 I also make the observation that the Monitoring Officer has admitted as much in her initial recommendation not to attend the Auction.
- 1.13 Lastly and most obviously, if the Officers did have delegated power as you suggest then why did the Officers ask the Executive for a determination in the first place?(and an emergency one at that)
- 1.14 With the utmost respect, the audit work carried out in regard to this particular issue appears to be surprisingly superficial even to a layman such as myself and fails to establish definitively whether the Officers had power to make the purchase in these particular circumstances or not.
- 1.15 This is very surprising indeed and is clearly far less than the level of diligence the public should be able to naturally expect from a Company with PWC's professional reputation and expertise. This point is of fundamental importance to the whole matter at hand and whether Officers had power to make the purchase having failed to obtain a lawful decision from the Executive is an issue around which much else turns in this case. One cannot help but feel that someone has been "got at" here.
- 1.16 We would ask that you modify this paragraph to reflect that the constitution specifically does not allow expenditure on items for which there is no budget provision; and that therefore it is very clear indeed that Officers did not have the powers to undertake the purchase without a lawful and constitutional decision from the Executive (or another appropriate Committee)
- 1.17 If you do not believe that my interpretation is correct, I would ask that you definitively state with clear reasons, whether or not the Officers had delegated power with regard to all of the facts and circumstances exactly as they stood in this case. We do not believe that it can be left as it stands as this creates an incorrect assumption that the fundamental point is in doubt.

#### **General**

- 1.18 We are also concerned to note the extreme delay and then the apparent abandoning of the two draft reports that were commenced into this matter following my written complaint to PWC. I understand that drafts were provided to Officers in November 2007 and July 2008. On 9<sup>th</sup> October 2008 Mr Jeremy Coleman the Auditor General wrote to me in response to concerns that I had raised saying that these reports were still with the Officers for "fact checking". We are astonished that such a vast period of

time was allowed for "fact checking", fully eleven months in the case of the first report and three months in the case of the second report. Whilst Mr Coleman stated in his response that it was normal (and of course proper) to check facts with the parties to the report, it would be astonishing and of considerable media interest if the lengthy time frames seen here were also considered "normal"

- 1.19 Of particular concern to us is the abandoning of the two reports by the auditor. The issue of Graigwen which has excited considerable public concern, has at its core, issues relating to the accountability of Senior Officers and whether they appropriately informed and appropriately sought a decision from the illegally constituted Executive or whether in fact Executive members were bamboozled into a position where they had to make an emergency decision armed with information that was insufficient for them to act in the best interests of the public who elected them.
- 1.20 Some basic and inviolable principles of democracy would appear to have been subordinated by Officers throughout this particular case which is why I am at great pains to get at the facts and to ensure that this cannot happen again here in Anglesey
- 1.21 You will therefore understand that it is with the very utmost level of concern that I now turn to the perceived influence of the Monitoring Officer in this case. Mr Howse from PWC stated clearly when he met with a group of concerned Executive members that the Monitoring Officer had "effectively parked a Sherman tank on our lawn", the clear message was a description of an astonishingly legal manoeuvre threatening PWC with litigation via an eminent barrister if she were to be criticised in any way in a PWC report. We were told that she had also sent a copy of the Barrister's CV to PWC. The clear impression left with members present at the meeting with PWC that day was of a carefully calculated legal intimidation of PWC
- 1.22 The Executive are concerned as to the appropriateness of the actions of the Monitoring Officer when faced with proper independent scrutiny, but of even greater concern is the perception that would be created to the layman that PWC have actually been inappropriately intimidated by the Monitoring Officer. Given the considerable public and media interest in this case and as Leader of the Council, I have to be able to steadfastly assure the electors of Anglesey that this is not so.
- 1.23 In the light of the known evidence and facts of this case, the astonishingly long periods allowed to Officers to "fact checking", the statements made by Mr Howse implicitly indicating PWC clearly felt intimidated by the Monitoring Officer's actions, the abandoning of not one but both draft reports by PWC and finally the inclusion of only a brief (and unfortunately I presently believe) materially factually inaccurate (short) reference in the Annual Management letter, I do not feel that I can presently provide this assurance to the electors of Anglesey.
- 1.24 In paragraph 20 to 22 you state that you have decided not to exercise your discretion to seek a declaration under S32 (1). I am of the view that the

Public Interest is not served in this case as the electors are not safeguarded from financial losses. The losses will have already occurred firstly through legal action to remove the restrictive covenant that existed in respect of Graig Wen and secondly through a fall in house prices. I do not believe that it is for the Electors of Anglesey to carry this loss when their elected representatives did not make a lawful nor a properly informed decision to proceed.

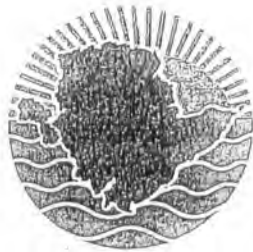
- 1.25 Your suggested reasons for not declaring the transaction illegal and unlawful as not being in the public interest is somewhat difficult to comprehend. To say that the transaction had been completed and would be complex to unravel is not good enough. The principle of your argument here is to entirely condone unlawful action merely because it will require further action to reverse it. Adopting this principle would mean that no wrongs would ever be righted. To have the accounts declared unlawful would not of its own trigger the unravelling of the original transaction nor would it be a mandatory step, nor the only course of action open to redress. I would ask that you review this aspect before publishing the Annual Letter. My arguments for doing so are clearly laid out in paragraphs 1.8 to 1.17 above.
- 1.26 I finally wish to make an observation regarding the non inclusion of a highly significant e-mail obtained under Freedom of Information Act disclosure. The e-mail originated from the Monitoring Officer to Ms Eimir Thomas the Acting 151 Officer on 19<sup>th</sup> July 2008. I append a copy of it to this letter for the avoidance of doubt. This clearly recognises a flawed procedure leading up to the Auction but despite it being illegal and unlawful a decision is taken to proceed and commit the County Council to expenditure of £300000 for the purchase plus subsequent legal fees for removing the restrictive covenant.
- 1.27 When all these matters are taken into consideration there is little doubt why the Executive have no faith in the Corporate Management Team. We are more than willing to take whatever action is necessary to resolve these issues.

On a personal note I would ask that both myself and Councillor R.G. Parry who wrote to you in January 2008 regarding the circumstances of the purchase of Graigwen receive a response to our correspondence. The public of Anglesey whom we represent and who have the power to cancel our mandate at the next election would not wish that the District Auditor be intimidated into a "whitewash" Your report must be fair but it must also be complete and robust. That would give us the confidence for the future to deal with issues fairly, objectively and without fear or favour to any person.

Yours Sincerely;

Cllr. Phil Fowlie; Leader; Anglesey County Council





CYNGOR SIR  
YNYS MÔN  
ISLE OF ANGLESEY  
COUNTY COUNCIL

ADMINISTRATIVE SERVICES

23 DEC 2008

ADMINISTRATIVE SERVICES

Mr Derrick Jones  
Managing Director.  
Isle of Anglesey County Council  
Swyddfa'r Sir  
Llangefni  
Ynys Môn  
LL77 7TW

Dear Mr Jones.

Thank you for your letter dated 15<sup>th</sup> December 2008 following our discussion on 10<sup>th</sup> December 2008. I would wish to correct certain assumptions which have been made following our discussion. If I can first relate to the conversation regarding the workshop undertaken by Dr. Zoe Radnor, Warwick Business School. I did mention to you that there was a section missing in the documentation. This relates to the second exercise which was undertaken namely "Gap Analysis". The rest of the document is in my view factually correct however I would have expected a summary in the Document from Dr Radnor herself. Is there such a document in existence?, if so I would appreciate having sight of it.

Dealing with the issues contained in the PWC draft Annual Letter, our conversation was not as simplistic as the question regarding the PWC findings outlined regarding Graigwen. Graigwen is only one of several issues highlighted by PWC where this Authority has serious Corporate Governance Issues. I do believe that it is time for this administration to move on, Anglesey has a number of problems which this Executive is anxious to do something about.

- o As a new Councillor and Executive Member, I have been dismayed by the obvious distrust shown to us by Senior Officers. There have been no attempts to brief us on the commitments made by the previous administration.
- o An example of this was the Social Service overspend and the ramifications that followed in getting Consultants to determine what had gone wrong. In fact the position has not been resolved, there is an overspend yet again on the current budget and there is talk of some improvement plan to rectify the situation.

CLIVE MCGREGOR  
Cynghorydd - Councillor

11 Maes y Coed  
Talwrn  
Ynys Môn - Anglesey  
LL77 7UA

ffôn / tel: (01248) 724568  
symudol / mobile: 07774980485  
ffacs / fax: (01248) 724494

E-bost: cmxau@ynysmon.gov.uk  
E-mail: cmxau@anglesey.gov.uk

Ein Cyf - Our Ref:  
Eich Cyf - Your Ref:

December 22, 2008

- o A further example was the Ombudsman's report on Housing Benefit maladministration. To tell the ruling group on the day of publication is careless and almost contemptuous. These issues were raised with you.

I did say to you that the 2006/2007 Annual letter made reference to member/officer conflict. This was incorrect as you pointed out to me, I now confirm that the 2006/2007 letter referred only to member conflict. The Annual letter for 2007/2008 does specifically refer to member/officer conflict.

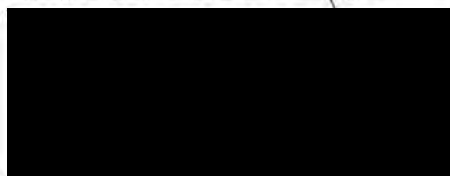
As this letter covers part of our Administration, it pains me greatly but doesn't surprise me given that the issues surrounding Graigwen have eroded whatever trust and confidence there might be between the ruling Administration and certain members of the Corporate Management Team. It may be that we require a Police Investigation into the issue as offences of Malfeasance in Public Office would appear to be made out. It is then and only then that confidence in the Isle of Anglesey County Council would be apparent.

The current Executive were not given an opportunity by you to formally respond to the draft Annual letter. It is my understanding that members of the Executive prior to 1<sup>st</sup> May 2008 were given a briefing by you as to its content. If that is correct, it is a matter of grave concern that the impartiality of the Senior Officers have been compromised.

Yours sincerely



Councillor Clive McGregor







## CMT'S REPLY TO THE "CRAIGWEN" ISSUES RAISED IN THE EXECUTIVE'S "PARAGRAPH 85 LETTER"

The points raised by the Executive fall into specific categories. We have attempted to deal with each in chronological order:-

### 1. Urgency

The Executive's decision was not taken until three days before the auction.

The Head of Service (Property) responded to PwC, on this issue, during the course of their investigation. A copy of his response is attached (A). Property Services deny any unreasonable delay.

There is also another issue. PwC have still to answer the question about how the Council might deal with similar circumstances in the future. That is to say, how it might best resolve the conflict between the obligation to publish / scrutinise and its statutory duty to secure best value. This was last addressed with PwC in the "Comments on draft Management letter". A copy is attached, with the relevant comments highlighted (B).

### 2. The Restrictive Covenant

#### Before the Council purchased "Craigwen"

This proposed purchase was treated like any other property transaction. Property Services sought advice direct from the Property Solicitor. This included a full review of the unregistered title deeds and the effect of the covenant.

The Property Solicitor responded to PwC on this point (C).

It was the opinion of the Property Solicitor that the covenant (precluding more than two dwellings / the operation of a business) would still permit the use of the site for access between the Council's adjacent land and the highway.

Property Services prepared the Report to the Executive (D). They made no reference to the covenant as they had formed the view that it was not an impediment to their intended purpose.

#### After the Council purchased "Craigwen"

After completion of the purchase, the Monitoring Officer was advised by the Council's (then) Valuer, that Property Services intended to submit a planning application to Committee, to develop the Council owned land adjacent to "Craigwen". Based on that information, the Monitoring Officer asked the Property Solicitor, subject to the agreement of Property Services, to apply to HMLR to remove the restrictive covenant from the charges register (i.e. that part of the registered title which identifies encumbrances recorded against the property). This was to ensure that the property would be as marketable as possible.

The removal of the covenant reflected the legal position. That is, as the covenant was expressed to be for the benefit of "Craigwen", and no other land, it could only have been enforceable as a personal covenant, by the original covenantee. The enforceability of the covenant ended with the death of the original covenantee in 1966. The application to HMLR did not change the status of the covenant but, rather, it removed the reference to a covenant which had long since expired.

So, whilst "Craigwen" was purchased to facilitate the development of the Council's adjacent land, the removal of the defunct covenant provided an opportunity for the "Craigwen" site itself to be developed. These facts would be easy enough for any prospective developer to establish, but only if they had first gone to the time and expense of securing legal advice. It was the view of the Monitoring Officer that a "clean" title would maximise interest in the land at the time of any future disposal.

As it may be relevant, it should also be mentioned that the Corporate Information Officer recently received an FOI request regarding the conveyancing costs involved in "Craigwen", to include advice on the covenant. A copy of his reply is attached (E). The legal costs involved in removing the reference to the covenant, from the charges register, was in the region of £60-£80.

3. **The decision to act on the flawed resolution of the Executive on the 16<sup>th</sup> July 2007**

Property Services took their Report to the Executive after consultation with the Corporate Director (Finance). His advice was that officers had the necessary delegated powers, provided they had a budget. The Executive decision was required to secure that budget. This is what paragraph 5.4 of the Report aimed to do. Whilst derived from paragraph 4.3.2.5 of the Constitution, the Executive's specific powers to transfer budget by virement, and the limitations thereon, are in the annual budget resolution adopted by the full Council. In relation to capital expenditure, the Executive has wide powers of virement provided consistency with the capital plan is maintained. The advice of the Corporate Director (Finance) to the Corporate Director (Environment and Technical Services) was largely about establishing whether the proposal was consistent with the capital plan (F and G). (It later transpired that not all the "technical issues", referred to in that exchange, were, ultimately, relevant).

We also dispute the claim that, because the matter had been referred to the Executive, officers thereby lost all delegated powers. This argument seems to rest on the content of previous standing orders. Those standing orders are irrelevant. In any event, the parallel in the current Constitution seems to be at paragraphs 3.5.1.5 and 3.5.1.6, where a Portfolio Holder may refer specific decisions up to the Executive, thereby removing the officer's delegated power. This was clearly not the case with the "Craigwen" decision, as it was referred up to the Executive by officers and the proposal had the full support of the Portfolio Holder; indeed of the whole Executive.

The fact that the Executive had been chaired by the Chairman of the Council came to the attention of the Monitoring Officer, on the afternoon of the 16<sup>th</sup> July 2007, when she asked for a meeting, to discuss her concerns, with the Managing Director and the Corporate Director (Environment and Technical Services). This took place late on the afternoon of the 16<sup>th</sup> July 2007. On the 17<sup>th</sup> and 19<sup>th</sup> of July 2007 the Monitoring Officer also discussed the matter with the Acting Section 151 Officer.

All the officers concluded that, on balance, the better course would be to give effect to the decision of the Executive, albeit in the knowledge that the decision was flawed.

The reasons for proceeding are reflected in the Monitoring Officer's e-mail to the Acting 151 Officer, of the 19<sup>th</sup> July 2007, and in the Report to the Executive of the 10<sup>th</sup> September 2007 (HI). The e-mail of the 19<sup>th</sup> of July 2007 was sent in response to a request from the Acting 151 Officer, who had not been present in the meeting of officers on the 16<sup>th</sup> July 2007, in order to enable her to release the necessary funds if the Council were successful at auction. The Executive Report was prepared by the Monitoring Officer, following consultation with the Corporate Director (Finance) and Head of Service (Property).

The officers' reasons for proceeding were:-

- The best option would have been to call a further formal meeting to ensure that the decision was taken again by a properly constituted Executive. However, given that there were only two clear days before the auction, it would not have been possible to do this without breaching other statutory requirements under the Access to Information Regulations. There was no mechanism available to cure the defect.
- This was a failing of procedure, not substance. The statutory provision, which had been breached, exists to preserve the neutrality of the Chairman of the Council, and to separate the civic from the political. It is clear from the tape recording of the meeting, that the Chairman of the Council did not influence, nor seek to influence, the outcome of the debate. PwC also considered the tape during their investigation.
- In their Report, and their presentation to the Executive, Property Services unequivocally recommended the purchase (subject to price) as being in the Council's best interests for the purpose of accessing the Council's adjacent land and facilitating its development. The Executive unanimously supported the officers' recommendation.

Whilst it was recognised that the defect could not be cured retrospectively, it was decided to ask the Executive to affirm its decision, at its next meeting, which was on the 10<sup>th</sup> of September 2007. The Report, which highlighted the defect, was exempt but was published to all members.

- Any challenge would be unlikely to succeed (JK) (The redactions relate to a separate and unconnected discussion).

Officers decided, on the relevant facts, that the procedural flaw was not so fundamental as to vitiate the decision to such a degree that it could not be relied upon as authorisation for the proposed expenditure.

By way of clarification, it may be useful to mention that PwC's Solicitors also appear to be placing reliance on Section 120 of the Local Government Act 1972 (L). This is the Council's overarching statutory power to buy land. This did not form part of officers' deliberations at the time, though.

#### 4. Delay

PwC conducted their investigation between September 2007 and January 2009. During that time they did not interview any of the officers involved. Nonetheless, they submitted a "draft for checking of factual accuracy", to the Managing Director, on the 26<sup>th</sup> of October 2007. This was circulated to the relevant officers, who met to discuss on the 30<sup>th</sup> October 2007. A full response was sent to PwC on the 15<sup>th</sup> November 2007.

No substantive reply was ever received but PwC wrote to the Monitoring Officer on the 17<sup>th</sup> July 2008, in relation to a new issue which had just been raised with them, concerning the restrictive covenant. A full reply was sent on the 29<sup>th</sup> July 2008.

In the meantime, on the 24<sup>th</sup> July 2008, after an unexplained delay of more than 8 months, PwC wrote to the Managing Director stating: "We are seeking to finalise our findings on this matter at the earliest opportunity. We will be grateful for any further comments on our findings...". Following consultation with relevant officers, further observations were given to PwC on the 17<sup>th</sup> September 2008.

However, also on the 17<sup>th</sup> September 2008, PwC advised that, in light of comments made to them that morning by the Executive, they would be unable to complete their Report without first obtaining their own legal opinion.

The periods of three months and eleven months referred to at paragraph 1.18 of the letter of 18 December 2008 do not correspond to times allowed to officers to respond, nor to the times in which officers did respond. The delays must have been caused elsewhere in the audit process.

#### 5. The role of the Monitoring Officer

The Monitoring Officer maintains that there was nothing inappropriate or unprofessional in her dealings with PwC and is happy for the Acting Managing Director to review her papers.

In response to PwC, the Monitoring Officer set out the rationale for proceeding with the Executive's flawed decision and explained why a Section 5A Report was not appropriate in this case. If necessary, she wrote, that she would obtain a second opinion from an independent solicitor. The Monitoring Officer never threatened PwC with litigation/proceedings/ "an eminent barrister".

In any event, PwC never replied on the point, and so an independent legal opinion was never sought. When PwC wrote again it was only in relation to new allegations they had received concerning the restrictive covenant.

Then, as already stated, on the 17<sup>th</sup> of September 2008 PwC advised that they must obtain their own legal opinion before finalising their findings. It is understood that they did so, although the opinion has never been disclosed.

### Matter arising

For the past eighteen months, the officers involved in the purchase of "Craigwen" have been subject to claims of incompetence, professional negligence, dishonesty and even serious criminality. Some of this has been played out in the public domain/media, to the detriment of the professional reputations of those involved. These allegations are denied and clear guidance is now requested from members on how they expect senior officers to exercise their professional judgement in the future.

While the facts of "Craigwen" are unlikely to be repeated, the Council may face similar situations, where a technically flawed decision has been taken, which is incapable of being remedied, and where a failure to act may have prejudicial consequences. Indeed, there has been a recent "near miss". On the 19<sup>th</sup> of January 2009 part of an Executive meeting was chaired by another member, even though the Leader was present. On that occasion it was possible to remedy the defect by taking the decisions again as none of the matters involved urgency/prejudice.

When we face similar situations, as inevitably we shall, we must know whether we are to exercise our professional judgement in a reasonable and reasoned way, in good faith and in the best interests of the Council (as we did with "Craigwen") or are we to operate a zero tolerance approach whereby any flawed decision shall never be acted upon regardless of its unique facts, or potentially adverse outcome?

The Corporate Management Team

10 June 2009





CYNGOR SIR  
YNYS MÔN  
ISLE OF ANGLESEY  
COUNTY COUNCIL

Ms Sinead Cook, Assessment Officer  
Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

21 July, 2009

Dear Ms Cook

**CODE OF CONDUCT COMPLAINTS MADE BY MR JOHN ARTHUR JONES AND  
COUNCILLOR W J CHORLTON AGAINST COUNCILLOR P FOWLIE – ISLE OF  
ANGLESEY COUNTY COUNCIL**

Thank you for your letter of the 17<sup>th</sup> July 2009. I note that the Ombudsman is to investigate the disclosure issue, presumably in reliance upon the findings of the Information Commissioner. A copy of your letter of the 17<sup>th</sup> July 2009 has been passed to the Council's Corporate Information Officer, Mr Huw Pierce Pritchard, who will contact you direct in order to provide any further documents/information required for the investigation. I would therefore be grateful if you would please amend your records to show Mr Pierce Pritchard as your primary point of contact on that matter.

In the meantime, I have considered the copy of your letter to Councillor Fowlie explaining why the Ombudsman has refused to investigate the complaint/s relating to the letter sent by Councillor Fowlie, on the 18<sup>th</sup> December 2008 on behalf of his Executive, to Wales Audit Office.

I struggle to understand your justification for not investigating the allegations. Your reason being: "that Councillor Fowlie was entitled to provide the Wales Audit Office with a full account of problems within the Authority as perceived by him and the Executive." Your analysis is fundamentally flawed. The legal test, which must be applied, is not what a Councillor perceives to be appropriate but, rather, whether his actions (or pronouncements as the case may be) constitute reasonable conduct in accordance with the objective test imposed by the Code. In reliance upon your reasoning no Councillor would ever be accountable for making any allegation, regardless of whether or not it had merit.

ADRAN RHEOLWR GYFARWYDDWR/  
DEPARTMENT OF THE MANAGING  
DIRECTOR

LYNN BALL D.B., (Hwys), Cynghiwir / Subeiriwr  
CYFARWYDDWR GWASANAETHAU CYFREITHIOL A  
PHWYLLGORAU/SWYDDOG MONITRO / DIRECTOR  
OF LEGAL AND COMMITTEE SERVICES /  
MONITORING OFFICER  
CYNGOR SIR YNYS MÔN \*  
ISLE OF ANGLESEY COUNTY COUNCIL  
Swyddfa'r Sir \* Council Offices  
LLANGFENI  
Ynys Môn \* Anglesey  
LL77 7TW  
DX 701771 - LLANGFENI

☎ 01248 752132

☎ 01248/752586

Ein Cyl/Our Ref. LB/CAH/CC-013217-LB/CC-13203-LB  
Eich Cyl/Your ref: 2115/200900770/SC/CC &  
2250/200900717/SC/CC

E-Bost / E-mail : LBXCS@anglesey.gov.uk



Whether Councillor Fowlie perceived himself to be acting correctly is neither here nor there for the purpose of the exercise which you are required to undertake in deciding whether or not to subject these complaints to investigation. You appear to have disregarded completely the most significant factor, which is whether or not the content of the Executive's letter (both substance and language) was justified by reference to the evidence and the requirements of the Code.

The situation is significantly aggravated because:-

- The allegations in the letter of the 18<sup>th</sup> December 2008 are specifically referred to in paragraph 85 of the Relationship Manager's Annual Audit Letter (a copy of which is already in your possession). The said letter was the determinative factor (described as the "tipping point" by Wales Audit Office) in the Auditor General being asked to conduct a Corporate Governance Review of the Council.
- The letter of the 18<sup>th</sup> December 2008 is in the public domain by virtue of statutory disclosure obligations arising from a number of requests received under the Freedom of Information Act 2000.
- The allegations in the letter of the 18<sup>th</sup> December 2008 had never been raised with the Corporate Management Team before being submitted to Wales Audit Office following which Councillor Fowlie sought to deprive the CMT of access to the letter, making timely rebuttal impossible. (I appreciate that this element of the complaint is subject to investigation).
- PwC also consider themselves to have been misrepresented in the letter of the 18<sup>th</sup> December 2008. A copy of PwC's letter of the 8<sup>th</sup> April 2009, to the Council's Corporate Information Officer, is also attached.

For information, I also enclose a copy of the Report which was issued last week by the Auditor General, being the findings of the aforesaid Corporate Governance Inspection. In particular I draw your attention to paragraph 41, in which the Auditor General indicates that the contents of the letter of the 18<sup>th</sup> December 2008 "were very critical of many of the actions of members of the CMT". The Auditor General also states that those criticisms had been strongly rebutted.

You have already received a copy of that rebuttal, and the documentary evidence in support, being the letter dated the 10<sup>th</sup> June 2009 from the CMT to the Executive. The CMT has still to receive a response to its letter and, of particular concern, no retraction has been received despite the fact that evidence has been presented which shows most of those allegations to be false or misconceived. The existence and quality of this rebuttal evidence should be relevant to your decision about whether or not the complaints be subjected to investigation by the Ombudsman.

Also enclosed is an extract of the proceedings from the floor of the Senedd at the National Assembly for Wales on Wednesday 15<sup>th</sup> July 2009 when the Auditor General's Report was presented by the Minister for Social Justice and Local Government. The seriousness of the matter is self-evident.

Finally, I attach a copy of a report from the BBC News website in respect of the disqualification of the former Deputy Leader of Somerset County Council by the Adjudication Panel for England in respect of breaches of the Code resulting from his making unjustified written allegations of serious misconduct against his Council's Chief Executive. There are clearly strong parallels between the issue involving Somerset County Council and the complaints which the Ombudsman has refused to investigate.

The Ombudsman has established his own threshold test to identify those complaints which shall be subject to investigation. That is "serious evidence of a significant breach". Given the facts and circumstances of this case both elements of the threshold are not only reached but surpassed.

Accordingly, I invite you to withdraw your letter of the 17<sup>th</sup> July 2009, including the timescale for the Complainant to lodge an appeal, and to undertake this analysis again based on the proper legal requirements and the Ombudsman's own threshold test.

Yours sincerely

Lynn Ball  
Cyfarwyddwr Gwasanaethau Cyfreithiol a Phwyllgorau/Swyddog Monitro  
Director of Legal and Committee Services/Monitoring Officer



Our ref: 2115/200900770

Ask for: Andrew Walsh

Your ref:

☎ 01656 641176

Date: 20 August 2009

✉ Andrew.Walsh@ombudsman-wales.org.uk

Lynn Ball  
Monitoring Officer  
Isle of Anglesey County Council  
Council Offices  
Llangefni  
Anglesey  
LL77 7TW

ADAIN GYFREITHIOL

21 AUG 2009

LEGAL SECTION

Dear Ms Ball

As you are aware the Ombudsman has now asked me to investigate the complaint from Councillor Chorlton against Councillor Fowlie of Isle of Anglesey County Council.

I have today written to Councillor Fowlie informing him of the decision to investigate. I enclose a copy of my letter.

As part of my investigation, it would be helpful if you could let me have any information which you consider relevant.

Yours sincerely,



Andrew Walsh  
Director of Investigations

Our ref 2115/200900770

Ask for: Andrew Walsh

Your ref:

☎ 01656 641176

Date: 20 August 2009

✉ Andrew.Walsh@ombudsman-wales.org.uk

Councillor Phillip Fowlie  
Braemor  
Y Fron  
Aberffraw  
Anglesey  
LL63 5EQ

Dear Councillor Fowlie

Code of conduct complaint

The Ombudsman has now decided to investigate the complaint made against you by Councillor William John Chorlton, of which you were informed on 10 July 2009.

As you are aware the Ombudsman had decided to investigate whether delaying the release of the letter once it had been formally requested may have resulted in a breach of the Code of Conduct. On receipt of our decision letter the complainant requested a review of the file. In addition to this Isle of Anglesey County Council Monitoring Officer Lynn Ball provided substantial evidence relating to the complaint. A copy of this evidence has been enclosed. In light of this evidence the Ombudsman considered that the content of the letter may amount to a breach of paragraph 6(1)(a) of the Code of Conduct and has decided to investigate.

I understand that the letter was sent on behalf of the entire Executive that were in place at that time, therefore I have written today to each member of the Executive advising them that they are the subject of an investigation.

You need not respond to this letter if you do not wish to. However if you do comment on the complaint at this stage, your comments may be disclosed to the complainant, or in any subsequent proceedings.

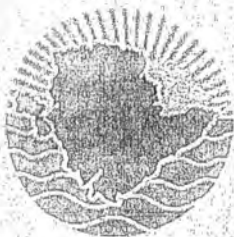
If my investigation finds that there is a case to answer, I will in due course put to you the evidence I have found and any questions which appear relevant in the light of it.

I have written to notify the Monitoring Officer of this investigation and have asked for any relevant information.

Yours sincerely,

Andrew Walsh  
Director of Investigations





CYNGOR SIR  
YNYS MÔN  
ISLE OF ANGLESEY  
COUNTY COUNCIL

Ms. Sinead Cook  
Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

29 July, 2009

Dear Ms Cook

**COMPLAINT AGAINST COUNCILLOR CLIVE MCGREGOR**

Thank you for your letter of the 21<sup>st</sup> July 2009.

The Complainant has informed me that he has/will lodge an appeal against your decision not to investigate.

In dealing with the appeal I would be grateful for your confirmation that the Ombudsman will take into consideration my letter and enclosures of the 20<sup>th</sup> July 2009 as, clearly, my letter had yet to reach you when you issued your findings of the 21<sup>st</sup> July 2009.

Additionally, while I agree with your view of the complaints made under **Part 3** of the Code, I take issue with your conclusions about the complaints made under **Part 2** of the Code.

This is not a matter of raising "concerns about trust issues" in correspondence with the Council's former Managing Director. The complaints against Councillor McGregor are significantly more serious than your description suggests. Paragraph 6 of my letter of the 20<sup>th</sup> July 2009 sets out the relevant events concerning the Councillor's repeated allegations, against senior officers, of the criminal offence of misconduct in public office. The serious nature of that offence is made clear in **Enc 7** of my letter, with matters further compounded by the fact that the Councillor is a retired Police Superintendent who must have been well aware, from the outset, of the serious implications of his claims.

Despite the Councillor's opinion that criminal offences had been committed, he did not refer the matter to the Police, nor did he raise his concerns with the officers involved; one of whom was the former Managing Director. Instead, he made his allegations to PricewaterhouseCoopers as part of the Executive's submissions in their letter of the 18<sup>th</sup>

ADRAN RHEOLWR GYFARWYDDWR/  
DEPARTMENT OF THE MANAGING  
DIRECTOR

LYNN BALL LL.B. (Hons), Cyfreithiwr / Solicitor  
CYFARWYDDWR GWASANAETHAU CYFREITHIOL A  
PHWYLLGORAU/SWYDDOG MONITRO / DIRECTOR  
OF LEGAL AND COMMITTEE SERVICES /  
MONITORING OFFICER  
CYNGOR SIR YNYS MÔN  
ISLE OF ANGLESEY COUNTY COUNCIL  
Swyddfa'r Sir - Council Offices  
LLANGFNI  
Ynys Môn - Anglesey  
LL77 7TW

DX: 701771 - LLANGFNI

01245 752152



01248 752586

Ein Cyl/Our Ref: LB/MWJ/CC-013204-LB  
Eich Cyl/Your ref: 2250/200900719/SC/CC

E-Bost/E-mail: LBXCS@anglesey.gov.uk



December 2008 (itself subject to complaints being addressed by the Ombudsman under reference 2.115/200900770/SC/CC and 2250/200900717/SE/CC).

Four days later, by letter of the 22<sup>nd</sup> December 2008, Councillor McGregor made his claims to the Managing Director. The matter was referred to the Section 151 Officer who concluded that there was no basis for passing the matter to the Police. The Councillor was advised accordingly.

In addition to the Section 151 Officer's findings, and the findings of PricewaterhouseCoopers, the Corporate Management Team then responded in detail to the allegations contained within the letter of the 18<sup>th</sup> December 2008. This included a comprehensive reply to each separate allegation of impropriety, concerning the acquisition of "Craigwen", being the subject of the claims of misconduct in public office.

Then, in a meeting on the 18<sup>th</sup> June 2009 I gave legal advice, the substance of which is referred to in paragraph 6(5) of my letter of the 20<sup>th</sup> July 2009. This advice also provided additional reasons as to why a referral to the Police was inappropriate.

Nonetheless, shortly after the meeting on the 18<sup>th</sup> June 2009 (the exact date of which is unknown to me) Councillor McGregor referred his complaint to North Wales Police.

I understand that he has since received a reply from them refusing an investigation. Whilst that letter has not been shared with me, Councillor McGregor quoted from it in a public meeting of the County Council on the 20<sup>th</sup> July 2009. A copy of the Minute is attached with the relevant comments highlighted. It should be noted that these Minutes are in draft format at present.

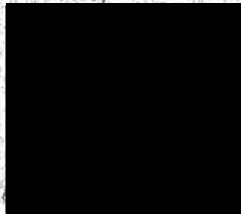
As you know, the Code requires that the conduct of members be measured against an objective legal test. The allegation of misconduct in public office was never justified and has become less defensible with each evolution. Councillor McGregor's apparent certainty that the offence is made out, flies in the face of the objective evidence, investigative findings and advice to the contrary.

Almost two weeks have now elapsed since North Wales Police refused an investigation yet still there has been no retraction or apology to those concerned. Taking into account all the facts it is difficult to avoid the conclusion that this has been pursued in bad faith and in the furtherance of improper motives.

These allegations against officers are in the public domain, and have been reported widely in the media, as a consequence of disclosures made under the Freedom of Information Act 2000, as well as Councillor McGregor's decision to quote extracts from the Police's letter, in an open meeting of the County Council, without having shared the content of the letter, before or since, with those directly affected.

Finally, I attach a copy of a report from the BBC News web site in respect of the disqualification of the former Deputy Leader of Somerset County Council, by the Adjudication Panel for England, following breaches of the Code resulting from his having made unjustified written allegations of serious misconduct against the Council's Chief Executive. The parallels with this case should be apparent.

Yours sincerely



Lynn Ball

Cyfarwyddwr Gwasanaethau Cyfreithiol a Phwyllgorati/Swyddog Monitro  
Director of Legal and Committee Services/Monitoring Officer



Our ref: 2250/200900719/SC/CC

Ask for: Mr Walsh

Your ref:

☎ 01656 641152

Date: 21 August 2009

✉ Christine.Watkins@ombudsman-wales.org.uk

Ms Ball  
Monitoring Officer  
Isle of Anglesey County Council  
Council Offices  
Llangefni  
Anglesey  
LL77 7TW

Dear Ms Ball

Code of conduct complaint

The Ombudsman has now asked me to investigate the complaint from Mr Jones against Councillor McGregor of your Authority.

I have today written to Councillor McGregor informing him of the decision to investigate. I enclose a copy of my letter. As part of my investigation, it would be helpful if you could let me have any information which you consider relevant over and above that which you have already provided.

Yours sincerely,

Andrew Walsh  
Director of Investigations



COPY

Our ref: 2250/200900719/SC/CC

Ask for: Mr Walsh

Your ref:

☎ 01656 641152

Date: 21 August 2009

✉ Christine.Watkins@ombudsman-wales.org.uk

Councillor Clive McGregor  
11 Maes y Coed  
Talwrn  
Anglesey  
LL77 7UA

Dear Councillor McGregor

Code of conduct complaint

As a result of a review of the complaint and submissions made by Isle of Anglesey County Council Monitoring Officer Ms Ball the Ombudsman has now decided to investigate the complaint made against you by Mr J Arthur Jones, of which you were informed on 6 July 2009.

It remains the view of this office that you did not have an interest, personal or prejudicial, in Graigwen. I have reconsidered the content of the letter to Mr Derrick Jones. I am of the view that this letter as an internal document is not one which is suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct. However I am persuaded that it may be considered a breach of paragraph 4(b) of the Code of Conduct.

In addition to this Ms Ball has provided evidence that you referred a complaint of malfeasance to North Wales Police, contrary to her advice that to do so would be inappropriate. This may be considered to be a breach of paragraph 8(a) of the Code of Conduct.

You need not respond to this letter if you do not wish to. However if you do comment on the complaint at this stage, your comments may be disclosed to the complainant, or in any subsequent proceedings.

If my investigation finds that there is a case to answer, I will in due course put to you the evidence I have found and any questions which appear relevant in the light of it.

I have written to notify the Monitoring Officer of this investigation and have asked for any relevant information.

I have included a copy of the submissions made by Isle of Anglesey County Council Monitoring Officer Ms Ball.

Yours sincerely,

Andrew Walsh  
Director of Investigations

Enc:



### RESOLUTION OF THE ISSUE OF THE PARAGRAPH 85 LETTER

The Executive and CMT acknowledge that during 2008 the relationship between senior members and senior officers had, for a number of reasons including poor communications and poor joint working, become dysfunctional. This created inevitable tensions and frustrations for both the member and officer leadership of the Council and both the Executive and CMT regret allowing this position to arise.

The tensions came to a head with a letter dated 18<sup>th</sup> December 2008 on behalf of the Executive to the Welsh Audit Office. The Executive accept that, when preparing the letter, they did not have all the facts and individually and collectively apologise for the letter and its contents and furthermore individually and collectively retract the allegations contained therein and withdraw the letter in its entirety.

CMT recognises the need to adapt the way they work with each new Executive and apologise for any failings on their part which contributed toward the problem. The CMT confirm that it never was their intention to wish that the Executive or any member of the Executive would fail and are committed to working with this Executive and future Executives in the best interest of the Council. This commitment is accepted by the Executive.

The Executive recognise that officers work for the council as a whole and must work within the context of the Council's constitution and scheme of delegation. The Executive individually and collectively recognise that the statutory roles of Monitoring Officer and Section 151 Officer are key to ensuring strong and effective governance within the Council. The Executive individually and collectively will support and protect these officers as a key safeguard for the Council and individual members.

The Executive and CMT confirm their joint commitment to work together to transform the Council and responding effectively to the issues raised in the Corporate Governance Inspection Report.

Both the Executive and CMT regard this matter as closed and will make no further comment.

[REDACTED] OLIVE MCGREGOR.

[REDACTED] R.G. PARRY.

[REDACTED] G.O. PARRY

[REDACTED] I WILLIAMS.

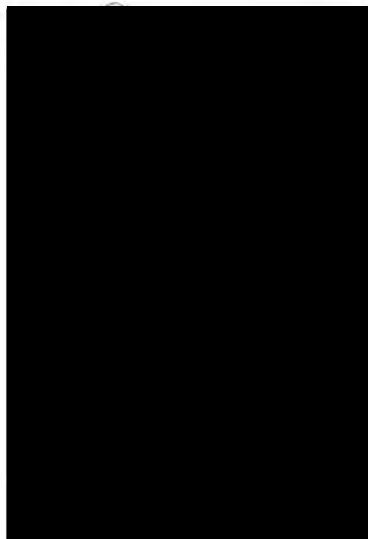


E SCHOFIELD.

B. OWEN.

R. L. HUGHES.

E. G. DAVIES.







Note of meeting with Cllr Schofield 28th August 2009

Cllr Schofield stated that upon winning the last election the majority group had difficulties with the MD. He contrasted Derek Jones negatively with some of the people who had held the post before.

He said this was a difficult matter for members to deal with and they had to look outside for help including meetings and discussions between the Leader and Jeremy Coleman at the WAO, the WLGA and other councils.

He said there had been problems in the Council going back many years from 1996. There was a public interest report and he thought the council had been going wrong since then and is it not addressing the problems properly and that there should have been more member oversight of the problems. The way this was expressed to me gave me the clear impression that he saw the problems being on the officer's side of the organisation rather than the member side.

He complained about not getting a final report on something and that I should get a copy of the final Farmer report.

He also said Anglesey had been good eg setting up one of the 1st voluntary standards committees and comprehensives.

Cllr Schofield was then very critical of Cllr Chorlton in particular stating that Cllr Chorlton had bullied staff as PH for Social Services and told them what to do and said that this was less than acceptable standards of corporate governance - not what the original independents were doing.

He described it is 'inexcusable' that members had not seen a draft of the audit letter and he said the officers appeared to be in the sense of denial. He said the 'yellow file' which contains all of the officer rebuttal of the paragraph 85 letter was nothing other than fabrications. He was highly critical of both Lynn Ball and to a lesser extent David Elis-Williams for producing such a file and indicated quite clearly that he did not believe much of what was in the file.....

He was particularly critical of DEW in connection with travel costs for members relating to Derek Jones.

Cllr Schofield also indicated that the 'opposition had been told about it' and kept well briefed on the para 85 letter and the yellow file; they had been better briefed than the controlling group. When pushed he said that this was down to Lynn Ball.

Cllr Schofield was firm that this was not any form of 'clash' between officers and members which I took to mean in terms of personality etc. He homed in that this was particularly about the incompetence of senior officers and a 'series of unresolved issues'. He indicated that this was predominantly around the legal officer and to a lesser extent finance officer but that it was not always evident.

He stated that he was keen to draw a line but that he could not do so as far as the legal officer was concerned - she had even made a complaint to the police.

He indicated that any documents that went from the controlling group were immediately leaked to the opposition and accused the monitoring officer of supplying the documents to Chorlton.

He did say that he was prepared to draw a line under Craigwen though!!

He was also critical of issues around FOI and the implications were that the officers were more likely to be helpful on FOI requests for the opposition than they were when he was in opposition.

Cllr Schofield proceeded to say how he had got involved in Craigwen and that he was unaware of the fact that the council was bidding. He said that he was open in his actions and if he was intending to be devious than he could have used an agent. He stated that he considered that the council's procedures for purchase had been in breach of the law. He also stated that he also believes that PwC had been lent on. He referred to Lynn Ball 'threatening' PWC with legal action with the so called tanks on the lawn letter, and that PWC had backed off as a result of that. This was said in such a way suggesting that Lynn Ball had been acting improperly. I pushed him on this as I could not see how PWC could be leant on to do something improper ie drop a valid issue under threat. He was adamant and again urged to me to look at it challenging how the Council could run with a Monitoring Officer who got away with threatening PWC.

There was a complaint to do with John Arthur Jones and the BBC. He indicated that somehow John Arthur Jones was trying to hold the Council to ransom.

Cllr Schofield accused Lynn Ball of doing things on Craigwen which 'amounts to lying' and that there were areas where because her conflicts she should keep out of matters. He said that there was 'no legal right' for the Council to be at the auction and that this was a very serious matter. I told him I'd read some files and as far as I could see this was no more than a procedural/admin problem and that I did not regard it as a serious matter; however he clearly did and I said if it was a procedural flaw and that there was a degree of unity and the same decision would be taken again then you may respond the way the council had. It was not actually a matter of being illegal and difference between that and unlawful.

Cllr Schofield did not agree with this was quite adamant that it was illegal – (he did not seem to understand the difference). He was particularly critical of her use or misuse of S5 reports. He said that Lynn Ball used S5 to protect the opposition but uses S5 to threaten the controlling Group. He said again you have to look at it carefully and look at Aled Morris Jones and compare it with Winston Thomas.

I said this was a serious allegation. He said that Craigwen was illegal.

I said as far as I was aware I didn't believe that PwC had agreed with that opinion. He indicated that that was not his view and that was a lot more information to come out yet with an implication that it was to come from him. I asked him about how the information would be released which he side stepped saying it would be politically damaging and he then criticised Lynn Ball for releasing information to opposition groups and said to Lynn Ball was 'not fit for purpose'. I made it clear that this was a serious allegation and he said he had a number of 'serious allegations about Lynn Ball'.

He thought whilst there were good structures in some parts of the Council she had 'personal weaknesses'. He believes that the monitoring officer role and the legal officer role should be split perhaps through joint working. He did not believe the monitoring officer role was full-time and could be secured through joint working perhaps sharing a full-time officer across various councils - he said such appointment could be overseen by some kind of properly constituted panel.

He was then very critical of Lynn Ball and Gareth Winston Roberts implying that they were too close to each other and that there was something improper in their (working) relationship. He did not believe that in many of the recent issues in the Council, Lynn Ball should have been part of the decision making process as she had a conflict of interest.

He said Lynn Ball's relationship with the opposition groups went back 4/5 years or more. She got them off the hook that as monitoring officer - she should not have done and that there was a conflict in her role. He repeated the allegation of partial use of S5. The role should have been split. Cllr Schofield said that he in fact was a whistleblower and he had blown the whistle on Lynn Ball's appointment as monitoring officer; he believed there had been improper interference in the process and said something about internal audits and some kind of complaint and good luck to get off. He was highly critical of the process and personally I thought it contradicted himself something to do with advertising or not (seemed to think that something was wrong). There was no independent investigation into her appointment. Eversheds had been appointed and they clearly were not independent as Lynn Ball had worked for them in the past....

As a result of all of this, ie his involvement in her appointment process, Lynn Ball was 'biased against Cllr Schofield'.

Cllr Schofield was critical of aspects of the Council's constitution and that Chairs of scrutiny change if the chairman leave particular parties.

He was further very critical of Lynn Ball about using Alan Carr and spending £130K on him as a solicitor he also stated that a note of a meeting had been taken to try and catch Cllr Schofield out but did not get the right people there.

He complained about John Arthur Jones in relation to Craigwen (Cllr Schofield bidding against the Council) and that this was another effort to catch him out which shows how he was treated when it was others like John Arthur Jones and Chorlton who were the problem.

Cllr Schofield stated that Lynn Ball had 'prepared documents for John Chorlton' and referred specifically to the ombudsman complaint and that her motives were to get at him. He said that you 'simply have to read the letter' to realise who had actually written it. I said that this would be a very serious matter and one that could result in serious disciplinary action if true. He urged me to look at it properly.

He said the ombudsman threw out the complaint in relation to the Para 85 letter and was to take no further action but was challenged by Lynn Ball. Cllr Schofield said that this challenge by her was wrong and was due to her relationship with the opposition. Lynn Ball should never have done that it was wrong and this and other acts were designed to do him down.

Lynn Ball had even challenged Cllr Schofield earlier when he had been ill over previous ombudsman's complaints. He accused Lynn Ball of making it public that Schofield had 'deliberately gone ill' and made sure that document became public with the implication that it was improper. He said that this was retaliation by Lynn Ball after 'the appointments fiasco'.

Indicated he only had to look at John Arthur Jones document to see who had written it.

Then Schofield indicated that Lynn Ball had gone to the police but that nobody had ever been interviewed.

It was clear that Cllr Schofield had no time for John Arthur Jones and again accused him of making accusations in a paper which 'only the monitoring officer would have known' making it clear that Lynn Ball had given the information to John Arthur Jones who had published it. I asked if he meant had deliberately given to John Arthur Jones in the knowledge that he would publish it and he said that was the case.

I said that this was a serious allegation and when pressed Cllr Schofield said it was 'general knowledge' that Lynn Ball did things to help the opposition. Even when pressured he insisted that Lynn Ball had leaked information to John Arthur Jones with deliberate intent. He said there were other examples something about standards and also about MD and severance.

He then questioned why documents had been 'released publicly' by Lynn Ball and indicated that he believed that was done publicly to embarrass him and 'designed to do harm' to him. He further stated that information had been released to the public through the Standards Committee by Lynn Ball to embarrass him about his illness and that others had no right to know anything about it.

I said that these were very serious allegations and if true could have serious consequences.

Derek Jones did a report to standards committee that Schofield believes that the way that it was handled was that officers were again judge and jury.

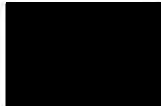
Cllr Schofield then said that he was prepared to move ahead. I questioned him on that on the basis that I could not see how given his previous comments he was prepared to move ahead. I said that everybody wanted people named and asked who he would have on his list. He said he was prepared to move ahead on Craigwen but had serious concerns about John Arthur Jones, John Chorlton and Lynn Ball. I said it was difficult for the Council to move forward whilst he still held those views. He homed in particularly on the Lynn Ball repeating yet again that she was not fit for purpose.

I indicated that given the serious nature of the allegations against her I really had no choice other than to investigate. I asked him whether he wished me to do that. Cllr Schofield indicated that he would and referred again to splitting of the posts between legal officer/monitoring officer as a way of removing Lynn Ball from the Council. I stated that normally I would regard conversations in my office as confidential but that I would not be able to regard his comments as confidential as I would need to discuss them with other people if I was to look at these matters seriously. He indicated that these matters were serious and should be looked at.

He was very critical of the Welsh audit office about Craigwen then about Jeremy Colman which I didn't fully understand, something to do with 'real problems' with the land (floods?) and something to do with valuation of land which I didn't understand??

He then complained about the state of smallholdings and the level of backlog work of £2.9m that needed to be done.

Finally I spoke to Cllr Schofield about strengthen corporate governance generally and told him that this was the area which I would be focusing on asked him for views or observations. His focus again was on Lynn Ball and he made it clear that he did not believe the Council could move forward whilst Lynn Ball was still an employee and I told him I would investigate his complaints. He said that there had never been a proper investigation and that I needed to look at things carefully. I told him that I would investigate them carefully.



29/8/09

Dictated 28<sup>th</sup> August 2009



ANGLESEY COUNTY COUNCIL

PEER REVIEW OF THE WORK  
OF THE MONITORING OFFICER  
AT ANGLESEY COUNTY COUNCIL  
UNDERTAKEN AT THE REQUEST OF THE  
INTERIM MANAGING DIRECTOR,  
MR. DAVID BOWLES

Neil M. Pringle  
Independent Consultant

January 2010



# PEER REVIEW

## UNDERTAKEN AT THE REQUEST OF THE INTERIM MANAGING DIRECTOR OF ANGLESEY COUNTY COUNCIL, MR. DAVID BOWLES

### INTRODUCTION

This is a Peer Review undertaken at the request of the Interim Managing Director of Anglesey County Council, Mr. David Bowles, based on a brief provided to me by the Interim Managing Director. The Review itself is a Peer Review based on eight issues which I have been asked to review. Those eight issues are described in detail within the main section of this report which is headed "The Issues Reviewed"

### PURPOSE OF THE REVIEW

The purpose of the review is to assist the Interim Managing Director of Anglesey in his assessment of the validity or otherwise of criticisms which have been voiced about the action taken by the Monitoring Officer in relation to the issues identified. This in turn will assist the Acting Managing Director in determining what programme of support, if any, is required for the Monitoring Officer given the challenges which the Council faces in establishing appropriate standards of corporate governance. There is a clear recognition on the part of the Acting Managing Director that the Monitoring Officer's role is an important supporting role to his own in establishing secure and efficient arrangements for the corporate governance of the Council.

### METHODOLOGY

The issues identified require the review of the exercise of the role of Monitoring Officer. It is important to emphasise that this is a management review of the exercise of the role of Monitoring Officer based on a desk top examination of all relevant files and papers and I have not, as part of the review, taken evidence from any other party or from the Monitoring Officer herself. I have been given the facility to approach the Monitoring Officer to make enquiries as to whether there might be additional papers or to seek clarification of the papers that have been submitted. I place on record that there appears to have been a full disclosure of all the files and relevant papers and the enquiries I have had to make of the Monitoring Officer have been limited to clarification of a very small number of relatively minor issues.

It is important in describing the methodology to explain how I have assessed the response of the Monitoring Officer to the eight issues which I have been asked to examine. The role of the Monitoring Officer is described in Section 5 and Section 5A of the Local Government and Housing Act 1985, as amended. I have, of course, taken account of the statutory description of the role but just as important in carrying out a Peer Review of this kind, is to take a view of the general exercise of those powers by Monitoring Officers across Wales and England. The role will be exercised in different ways at different times. There is a significant measure of discretion in the way that the duty is exercised. It will differ according to the confidence that exists in a Council's ability to maintain appropriate standards of corporate governance; the record which the authority has in relation to such issues based on the assessments from external inspection; the number of individual standards issues which an authority has faced over given periods of

time: and, therefore, given those descriptions the response may differ according to the levels of confidence in those standards at the time the judgement is made. There may often be different components to those judgements even where on initial examination the factual situation appears quite similar. What I have, therefore, sought to do in undertaking this Peer Review is to adopt the standard of whether or not the response in relation to the issues identified has been within the broad range of responses that might be expected of Monitoring Officers acting within Wales or England.

## REVIEWER'S RELEVANT EXPERIENCE

I currently work as an independent consultant principally undertaking roles within the field of local government. I have served as Chief Executive for a period of 15 years, serving three authorities in England and Wales from 1993 to 2008 before retiring in early 2008. A Solicitor by profession (although I have not held a current Practising Certificate since November, 2008), I held senior legal positions within County local government in England from 1975 until my appointment as Chief Executive in 1993 and do, therefore, have practical experience of the exercise of the Monitoring Officer role as well as working in my period as Chief Executive with Monitoring Officers who employed differing styles. I have also undertaken a number of Peer Reviews for the IDeA and have undertaken corporate inspection work for the Audit Commission in England and for the Wales Audit Office.

Although the last 15 years were in the role of Chief Executive I have retained a particular interest in the field of corporate governance. This is partly because of my background as a lawyer but partly also because in my role as Chief Executive I was appointed as the first Chief Executive of two new unitary authorities with responsibility for establishing appropriate governance arrangements for those authorities from scratch. In establishing the arrangements in Herefordshire for the appointment of a joint Chief Executive of the Council and the Primary Care Trust following my retirement I also faced the challenges of establishing appropriate governance arrangements for the respective organisations. Since my retirement from the role of Chief Executive I have maintained that interest through the corporate assessment and corporate governance inspection work undertaken in both Wales and England.

## THE ISSUES REVIEWED

### ISSUE 1

#### INVOLVEMENT "TANKS ON THE LAWN"

*In response to the Craigwen issue, Price Waterhouse Coopers (PWC) carried out a review. The review was critical of aspects of the Monitoring Officer, and particularly her failure to issue a Section 5A report.*

*The Monitoring Officer responded to PWC and, within that reply, indicated that, if necessary, the Council would seek independent legal advice. This letter became known as the "tanks on the lawn" letter. The letter became represented by the Executive as a threat to PWC of legal action against them. I am asked to read the relevant correspondence and conclude whether there was, in fact, any form of threat to PWC.*

- 1.1 I have examined the relevant files and supporting documentation provided and it is my view that both the Council's external auditors, PWC, and the Council's Monitoring Officer were pursuing their duties appropriately in the best interests of the Council. There is clear evidence of a difference of view, most particularly in relation to the interpretation of the role of the Monitoring Officer as set out in Section 5 and Section 5A of the Local Government and Housing Act 1985. There was a robust, but perfectly appropriate,

professional exchange between the Monitoring Officer and the Council's external auditors, PWC.

- 1.2 I make the straightforward observation that the literal interpretation of the Section 5 and Section 5A role advanced by the external auditors, putting aside its implications for the particular issue under investigation, did conflict with the manner in which Monitoring Officers across both Wales and England have generally exercised the role since its introduction in the Local Government and Housing Act 1985. This was evidenced in part by the Monitoring Officer's letter of response of 15th November, 2007.
- 1.3 I do not find the final paragraph of the letter of 15th November, 2007 to be inappropriate. It can be interpreted in different ways. The interpretation I would place upon it expressed in ordinary language is "as well as dealing with the particular issue under investigation, there are some important issues of principle which have wider implications for the role Monitoring Officer. Please can I see the revised draft because if those can't be satisfactorily resolved in the drafting, I would like to take further independent, second opinion".
- 1.4 That appears to be a responsible way of approaching the issue in circumstances where the Monitoring Officer is dealing with a specific issue which is sensitive both to the exercise of her role and therefore to her authority but which also has more far reaching consequences for the future exercise of the role of Monitoring Officer generally. It provides an important element of independence should that be required. I note for the record that that further advice was not required. It follows that I would not accept the description of the Monitoring Officer's letter advanced in the Executive's letter of 18th December, 2008 to Mr. Alan Morris (referred to under the heading General Para 1.21). There is no written evidence of PWC's use of that description but I do accept that interpretation was described as re-stating a view which the Leader believed to be the view held by their external auditors, PWC.
- 1.5 The conclusion I have reached is that there was a robust, but not inappropriate, professional exchange between the Monitoring Officer and the Council's external auditors. It follows from that conclusion that I do not believe it would be appropriate to describe that robust professional exchange as constituting "a threat".

## ISSUE 2 PARAGRAPH 85 LETTER

*The Ombudsman initially declined a reference from a Member of the Council to investigate whether the conduct issues arising out of the letter from the Executive to the Wales Audit Office dated 18th December, 2008 represented a breach of the Code. The Monitoring Officer subsequently responded to the Ombudsman challenging his reasoning and indicating that there was relevant case law elsewhere in the UK, which indicated that this was a potential breach of the Code. I am asked to look at the exchanges of correspondence and determine whether the Monitoring Officer's analysis of the situation with regard to the Ombudsman's reasoning and the precedent, were correct/reasonable.*

- 2.1 I have examined the files and supporting documentation and have concluded that the analysis advanced by the Monitoring Officer was reasoned and proportionate. Indeed, I observe that those arguments have largely been accepted by the Ombudsman in the agreement to extend the scope of the investigation as confirmed in the letter of 20th August, 2009.
- 2.2 The following reasoning is relevant to that conclusion. The complaints to the Ombudsman were lodged independently by one former and one serving councillor. As a matter of practice, Monitoring Officers are copied into correspondence between the Ombudsman and complainants. It is important in these circumstances that Monitoring Officers exercise with care their role in advising individual councillors who may be complainants. There are a complex set of relationships to be managed. Both the councillor who makes the complaint and the councillor against whom the complaint is made may approach the Monitoring Officer for advice. In this particular case, there is the added complication that whilst the Corporate Management Team (CMT) had not lodged a complaint with the Ombudsman they had issued their own letter of rebuttal to the letter referred to in paragraph 85 of the Annual Letter, and the contents of that rebuttal could arguably be relevant to the consideration of the complaint. The overriding duty of the Monitoring Officer, however, was to act in the best interests of the Council.
- 2.3 There is clear evidence that the Monitoring Officer was aware of the complexity of exercising her role in these circumstances and was overt in separating those roles.
- 2.4 I am satisfied that the Monitoring Officer was giving primacy to her duty to act in the best interests of the Council. In particular, I am making the assumption that the Ombudsman had not at the time of making the decision set out in the letter of 17th July, 2009 had the opportunity to address the issues set out in the Corporate Governance Inspection report on the Council and the subsequent debate within the National Assembly for Wales, both of which events I understand took place on 15th July, 2009. The Ombudsman's initial indication of his approach to investigation set out in his letter of 17th July, 2009 sits uncomfortably with many of the references in the Corporate Governance Inspection e.g. "there was a weak self-regulation of inappropriate behaviour and conflict" (paragraph 8) and the reference to the paragraph 85 letter (paragraph 41).
- 2.5 I therefore re-state my opinion that the steps taken by the Monitoring Officer in writing to the Ombudsman were reasoned and proportionate.

### ISSUE 3 COLLUSION WITH COUNCILLOR CHORLTON

*There has been a suggestion in relation to the above that the Monitoring Officer may have assisted Councillor Chorlton in the framing of his objection to the Ombudsman. I have been asked to review the documentation and the original complaint and to determine whether based upon that desktop review, it is likely that Councillor Chorlton had received any assistance in framing his original objection?*

- 3.1 I have reviewed the files and supporting documentation and there is nothing in that documentation that would lead to the belief that Councillor Chorlton had received legal advice. Without any disrespect to Councillor Chorlton, the circumstantial evidence is that the complaint is not drafted with any particular legal precision referring as it does to

general but relevant provisions of the Code of Conduct which would be accessible to any Member of Council. There is evidence that some of the correspondence between the complainants and the Ombudsman had been copied to the Monitoring Officer but there is no evidence that the Monitoring Officer had commented on the copies, let alone offered advice. In my experience, it is not uncommon for Members making complaints to copy the Monitoring Officer in to correspondence in this way. There is a single attendance note of a meeting between the Monitoring Officer and Councillor Chorlton on the file and it is clear from that attendance note that the Monitoring Officer was not prepared to offer advice or support in relation to submission of the complaint and maintained an appropriate professional stance.

- 3.2 I have, therefore, concluded that there is no evidence to support the suggestion that has been made.

#### ISSUE 4 POLICY FRAMEWORK

*Members have been concerned that that they have received different advice about what needs to be approved by full Council. They are concerned that apparently under the Council's Policy Framework, schools' rationalisation does not need to be referred to full Council, whilst leisure rationalisations do. I am asked to review the Monitoring Officer's exercise of her discretion/advice given in connection with leisure rationalisation and the schools' rationalisation and to advise whether the differing advices were justified?*

- 4.1 I have examined the files and the supporting documentation and it is clear from the files that the Monitoring Officer adopted the approach that would be expected in determining this matter. No Monitoring Officer can be expected to have the same level of knowledge of the individual documents within the Council's Policy Framework as is held by the responsible Director and his or her staff. In relation to the issue of the leisure rationalisation, she sought the advice of the relevant Department and did so from the relevant assumption that unless she heard from the Department to the contrary then she would assume that none of the Plans/Policies in the Council's Policy Framework for which the service had responsibility would be affected by the Executive's proposals.
- 4.2 There is clear evidence from the files of responses indicating that a number of the high level objectives included in documents within the Policy Framework were potentially affected by the leisure rationalisation.
- 4.3 It is clear from the file that the Monitoring Officer undertook a very similar exercise in relation to the Policy Framework in advising on the schools' rationalisation and received very clear but potentially different advice from the Department concerned. I haven't had access to all the documents within the Policy Framework as part of this review (and nor would it have been appropriate for me to substitute my judgment for that of those who are familiar with those documents) but I would be surprised if there were not similar high level aspirations for young people that would be affected by schools' rationalisation. It is important that I am absolutely clear that I am not concluding that there was an inconsistency. It would, however, be easier for me to have concluded that the decisions were consistent if the apparent difference had been further tested. Based on my own knowledge, I think it is probably likely that the same conclusion would have been reached. Whilst the view of the relevant officers of the Welsh Assembly is a relevant

component of that consideration it is not conclusive. Drawing on my own experience, I am aware that a very significant distinction between the two processes is that as part of schools' rationalisation if it is proposed to close or significantly amend the role of an individual school then that proposal would be the subject of a separate statutory process in which the Council is not the ultimate decision-maker. It would have assisted the understanding of Members if those distinctions had been more clearly drawn to their attention.

- 4.4 It is, however, important in the context of the review that I have been asked to undertake to make it clear that that would have been an aid to the understanding of the distinction and not a criticism of the advice given by the Monitoring Officer which was consistent with the advice she had received from the relevant officers.
- 4.5 I have concluded, therefore, that the advice provided by the Monitoring Officer was consistent based on the more detailed advice which she had sought from the relevant senior departmental officers.

## ISSUE 5 SECTION 5 REPORTS

*It has been suggested that the Monitoring Officer has not used her discretion consistently on whether to issue a Section 5A/5 report in connection with a flawed Executive decision taken on 16th July, 2007 as compared to the conduct of the Council's Chairman at a meeting of the County Council on 5th March, 2009. In the first case, the Monitoring Officer did not consider that a Section 5A report was appropriate, but in the second case she decided she would issue a Section 5 report if her alternative solution was not acted upon. I am asked to examine both the files and to form my own assessment of the Monitoring Officer's exercise of her discretion in each of these matters and to assess whether there was any inconsistency which was not justified by the differing facts of each case.*

- 5.1 I have examined the files and supporting documentation.
- 5.2 I understand the initial perception that because the events surrounding the flawed Executive decision on 16th July, 2007 involved consideration being given to the exercise of the Monitoring Officer's Section 5A powers and because the events of 5th March, 2009 involved consideration being given to the exercise of her Section 5 powers, there should be a measure of comparability between the two events.
- 5.3 I understand why on an initial analysis that might be seen as an effective way of assessing the consistency or lack of consistency with which the Monitoring Officer exercises her role.
- 5.4 I have given a general description in the introduction to this report of what I believe to be the broadly accepted parameters within which Monitoring Officers in Wales and England will be expected to exercise their role. That will depend on a number of factors including the overall standards of governance within an authority, whether appropriate standards of governance can be secured without the issue of a formal report, and the impact that the issue of a report or otherwise might have in maintaining the reputation of the authority. I have examined the files and supporting documentation and the facts and

circumstances of the two events differ to such an extent that I don't believe that any analysis of the exercise of the Monitoring Officer's powers on that basis would be meaningful.

- 5.5 I have concentrated, therefore, on examining whether there has been any inconsistency on the part of the Monitoring Officer in exercising her role. I do that in relation to each event but do so briefly to avoid repetition of the full factual details which were included in the papers.
- 5.6 In relation to the events of 16th July, 2007, the Monitoring Officer faced a situation in which she was involved only after the conclusion of the meeting. The purpose of the meeting, which was to authorise a purchase of property at auction, was supported by an appropriate report.
- 5.7 The procedural defect related to a failure to observe the Council's Constitution in making an appointment to the Chair in the absence of the Chairperson. The Monitoring Officer was not present at the meeting. The record shows that there was no contention in relation to the decision itself and that is supported by the fact that the principle was again uncontested when the Executive met to confirm its decision (although, it is accepted that the subsequent ratification could not remedy the procedural defect). The Monitoring Officer faced a difficult decision. On the basis of the report to the Executive, the Council stood to make a substantial financial gain if it was successful at auction. Time did not permit the perfection of the decision by calling another meeting and the issue of a Section 5A report would have had the same effect of preventing the attendance at auction. The papers show that there was appropriate consultation with the Managing Director, with the Property Division and with the Finance Department. There was also evidence that the Monitoring Officer had analysed carefully the risk to the Council in terms of any possible challenge by way of Judicial Review.
- 5.8 Although attention is focused on whether or not the Monitoring Officer should have exercised her powers under Section 5A of the Local Government and Housing Act 1985, as amended, I make the relevant observation that there is no suggestion within the file that it would have been necessary for the Monitoring Officer to exercise her Section 5A powers in order to secure compliance. There was also a subsequent objection to the expenditure following publication of the Council's Accounts for the year and I observe that in the Annual Letter, paragraph 17.2.21, the Auditors re-stated much of the thinking which had led to the Monitoring Officer's conclusion. However, the Auditors made some important recommendations in relation to the future recording of such events.
- 5.9 What the Auditors did not address, because they are not required to do so in addressing representations received under the Accounts and Audit (Wales) Regulations 2005, is whether on the merits it would have been in the interests of the Council for the Monitoring Officer to have exercised her Section 5A powers. I am confident in concluding that the Monitoring Officer's approach was consistent with the approach that would be exercised by many Monitoring Officers across Wales and England. It is important to emphasise that this does not mean that every Monitoring Officer would have taken the same decision.
- 5.10 I have then looked separately at the approach to the meeting of 5th March, 2009. Again, I will rehearse the salient facts very briefly because they are available in detail in the papers with which I have been provided.



- 5.11 At this meeting, amongst other agenda items, was the Wales Audit Office Relationship Manager's Annual Letter for 2007/2008. That was an important reputational item for the Council as a whole because within that report was a recommendation that the Auditor General carry out an inspection under Section 10A of the Local Government Act 1999 of Corporate Governance of the Council due to concerns that difficulties in working relationships between some Executive Members and some senior officers were having a detrimental impact on the Council and its ability to fulfil general Best Value duty. I have examined both the Minutes of that meeting and have listened to the recording of the relevant part of the meeting. There was an effective presentation on the Annual Report from the Wales Audit Office and a representative of the external auditors, PWC, following which, in the normal course, a debate would have ensued. There was a Motion proposed that the Annual Letter be accepted and referred to the Executive which, again, would normally have prompted debate. There was then an immediate move to propose a Closure Motion. This is a common procedural device in the Constitutions of most councils which enables a councillor to move that the "Motion be now Put" and, thereby, bring a close to the debate. Again, in most councils, the discretion to accept immediately or postpone such a Motion will lie with the Chair of Council. However, in exercising that discretion, the Chair is expected to satisfy himself/herself that the item has been sufficiently discussed. Again, it is well established in law that in chairing the meeting, the Chair must act neutrally allowing different views within the Council to be expressed. Having been Chief Executive of three local authorities over a period of 15 years, I am familiar with such procedural Motions which will sometimes be used to avoid prolonged debate to the discomfort of a particular group or groups within the Council. There is nothing improper with the Constitution being used in that way but it has to be used within the bounds of reasonableness. Again, based on the Minutes and the recording of the debate, I agree with the conclusion reached by the Monitoring Officer that there had been no (and, therefore, self-evidently insufficient) debate which would satisfy that requirement.
- 5.12 It is also clear from both the Minutes and the recording that there were a number of attempts on the part of the Monitoring Officer, the Managing Director and other Members of Council to seek the opportunity for the Monitoring Officer to advise. It is clear from the record that if not actually denied, then the attempts to secure the advice of the Monitoring Officer were disregarded and she was unable to offer advice pursuant to paragraph 8 (a) (iii) of the Council's Constitution.
- 5.13 Having read the Minutes and listened to the tape recording of the meeting, I have no hesitation in concluding that not only was the conduct of the meeting unseemly, but it was extremely ill-advised in the context of the contents of the Annual Letter and the proposal for a Corporate Governance Inspection.
- 5.14 The subsequent steps are clearly documented and there is no need for me to rehearse them in full. There followed a period of reflection which secured an Extra-Ordinary Meeting of the Council. In my view that was an inevitable and essential step. I make the observation that the Monitoring Officer dealt sensitively with the arrangements for the Extra-Ordinary Meeting and that the requisition for the meeting was secured with the assistance of the Welsh Local Government Association. That was reflected in the letter of 17th March, 2009 which the Monitoring Officer sent to all Members of the Council. It is also reflected in the advice she gave to the Chairman of the Council in her letter of 24th March, 2009 and in the way in which she maintained confidentiality of that advice when pressed to disclose such advice at the meeting on 27th March, 2009.

5.15 I conclude, therefore, that

- (i) the Monitoring Officer gave appropriate consideration to the exercise of her Section 5A powers in relation to the events of 16th September, 2007; and
- (ii) the Monitoring Officer gave appropriate consideration and notice of her intention to use her Section 5 powers, if necessary, in relation to the proceedings at the meeting of Council on 5th March, 2009.

It is important to observe that in neither case was it necessary for the Monitoring Officer to exercise her Section 5A or Section 5 powers.

There is only a limited comparability between the events of 16th September 2007 and those of 5th March, 2009 but I can determine no inconsistency in the approach to the use of those powers even given the very disparate nature of the facts of the two events.

## ISSUE 6

### STATEMENT OF THE OMBUDSMAN

*The Monitoring Officer provided a statement to the Ombudsman in relation to complaints about a Member chairing a Council meeting. The allegation is that the statement is not purely factual but also contains comments designed to undermine the Member. The offending sections have been highlighted in the documents with which I have been provided. I am asked to advise on whether the comments are consistent with those that might be expected in such a statement?*

- 6.1 I have examined the statement provided by the Monitoring Officer to the Public Service Ombudsman for Wales.
- 6.2 I have examined the files and supporting papers and it is clear that, initially, the Monitoring Officer provided the Public Services Ombudsman for Wales only with the supporting records of the Council. The allegation that the statement is "not purely factual" is correct but is based on an incorrect understanding of the Ombudsman's request to the Monitoring Officer. The nature of the Ombudsman's request is important to the understanding of the issue and I, therefore, quote the relevant extract in full. "...you have yet to provide the Ombudsman with a statement in respect of your recollection of these events and any comments you may have in your capacity as a witness in this investigation as opposed to simply in your role as Monitoring Officer. Accordingly, I would be grateful if you would provide me with such a response. ... In particular, it would be helpful if you could confirm to what specifically you were referring and what you meant when commenting (in the Council meeting of 5th March) that Councillor Jones was, "driving a coach and horses through the Constitution". Please also confirm whether you consider that Councillor Jones, in his capacity as Chair, prevented you from speaking in response to attempts from various Members to seek legal advice. Please also confirm whether or not you subsequently had any conversations with Councillor Jones in respect of the way in which he chaired the 5th March meeting."

- 6.3 In the context of that specific request from the Ombudsman, it is my view that the comments offered by the Monitoring Officer were consistent with both the Minutes of that meeting and the recording of the relevant part of the meeting of 5th March, 2009.
- 6.4 Paragraphs 13 – 16 deal specifically with the points which the Public Services Ombudsman had asked the Monitoring Officer to address and inevitably they contain elements of opinion because that is what was being requested of the Monitoring Officer. Based on the records, I think it is incorrect to ascribe the motive that they were "designed to undermine the Member" to the opinion that was expressed.
- 6.5 Paragraph 17 gave balance to the statement in giving a positive assessment of the manner in which the Chairman generally undertook his role. Whilst exception has been taken to paragraph 17, and I assume specifically to the last sentence of the paragraph, I do not think that that objection is well based. In one sense the statement is unnecessary but it is, at most, a straightforward description of the approach that the Ombudsman would be bound to take to balancing the positive assessment which the Monitoring Officer had provided of the Chairman's previous exercise of his role and the exercise of his role in relation to the meeting which was the subject of complaint.
- 6.6 I, therefore, conclude that the statement provided by the Monitoring Officer is not inconsistent with what might have been expected given the specific enquiries made by the Ombudsman. In offering opinion my preference would be to avoid use of emotional language but that is an issue of style not substance. I would not agree that the language used was designed to undermine the member. Indeed the overall impact of the inclusion of paragraph 17 is to give a positive assessment of the Chairman's general performance of his role.

## ISSUE 7

### JOHN ARTHUR JONES

*It has been alleged that the Monitoring Officer made an inappropriate/unauthorised disclosure of documents to Mr. John Arthur Jones (when he was Councillor John Arthur Jones); information which, it is claimed, he then placed in the public domain. I am asked to see if there is any evidence to support this claim?*

- 7.1 I have examined the file and supporting documents relating to this matter.
- 7.2 I deal firstly with the claim that the information disclosed was subsequently placed in the public domain. I am not able to comment on the accuracy or otherwise of the claim that Mr. Jones placed information with which he was provided in the public domain. What is absolutely clear, however, is that the Monitoring Officer did everything in her power to ensure that there should be no such disclosure. Her letter of 24th September, 2007 concluded, "finally, please note that the enclosures with this letter are provided exclusively for the purpose of enabling you to seek professional advice with regard to the prospects of pursuing legal proceedings against the Council/Ombudsman and for no other purpose save for in use within Court proceedings".
- 7.3 It is the Monitoring Officer's view that she was obliged to disclose the documentation, redacted as appropriately, under the Pre-action Disclosure Rules. If that is an accurate

description of the Pre-Action Disclosure Rules, and it appears not to be contested, then it is clear the Monitoring Officer had a duty to disclose.

7.4 It is important that I draw attention to the fact that although I am qualified as a Solicitor and held a current Practising Certificate until November 2008, the Pre-Action Disclosure Rules are not an area of my professional expertise. On the basis of the information provided to me as a basis for this review, I am satisfied that the Monitoring Officer was acting under the Pre-Action Disclosure Rules. On the basis of her letter of 24th September, 2007, she did everything within her power to draw to the attention of Mr. Jones that the disclosure was only made and was only to be used within the scope of the Pre-Action Disclosure Rules.

7.5 I do not find that the allegations are substantiated.

## ISSUE 8 RELEASE OF INFORMATION

*It has been alleged that the Monitoring Officer should not have released information into the public domain through the Standards Committee in relation to complaints made against a councillor to the Ombudsman which had been investigated but discontinued as a result of the councillor's ill health. I am asked to review what happened and advise accordingly.*

8.1 I have examined the files and supporting documents provided to me. I find no basis for the allegation that the Monitoring Officer released information into the public domain through the Standards Committee in relation to complaints made against a councillor to the Ombudsman. It is clear from an examination of the files that the decision to report the matter to the Standards Committee was taken by Mr. Derek Jones, Managing Director. It is clear from the file that he wrote personally to the Ombudsman on 22nd October, 2007 and the Ombudsman replied to him on 25th October, 2007. Mr. Jones then wrote to all affected members of staff advising them of his intention to report to the Standards Committee. In his letter to staff, he states, "in the circumstances, the best I can now do, is discharge the Council's duty of care to staff and to address the concerns expressed by Unison, on behalf of their members, to ensure that as much information as I may disclose, concerning the outcome of these investigations, is placed in the public domain". I can find no basis for legitimate complaint against the Monitoring Officer save if it is suggested that the Monitoring Officer was responsible for the administration of the Standards Committee and that she should have exercised her powers to refuse the Managing Director's request to place those papers on the agenda. I would reject a suggestion that that would have been an appropriate use of the Monitoring Officer's statutory powers.

8.2 For the record, the items placed on the agenda were:

- ◊ letter from the Managing Director to the Public Services Ombudsman dated 22nd October, 2007;
- ◊ reply from the Ombudsman to the Managing Director dated 25th October, 2007;

- ◇ example letter sent out to 20 Council staff involved in the investigations into the complaints referred to above;
- ◇ letter from the Ombudsman dated 22nd March, 2007 from the Council's (former) Managing Director;
- ◇ letter from the Ombudsman dated 22nd March, 2007 in relation to the complaint from the Council's Monitoring Officer

8.3 I find no substance to the allegation made against the Monitoring Officer in relation to the report and release of correspondence at the request of the Managing Director placed on the agenda for the Standards Committee of 29th November, 2007.

## SUMMARY AND OVERVIEW

I have reviewed as requested the conduct of the Monitoring Officer in relation to the eight specific matters drawn to my attention as part of the brief. As I explained in the introduction to this review and the explanation of the methodology, I have conducted this review not on the basis of whether the same action would have been taken by every Monitoring Officer but on the basis of an appropriate professional assessment as to whether the actions taken by the Monitoring Officer displayed the broad range of competencies expected of an effective Monitoring Officer.

My overall view is that the officer demonstrates those competencies and that she appropriately adapts them to the local circumstances of Anglesey County Council. As is illustrated in the recent Corporate Governance Inspection, there are particular challenges in relation to appropriate standards of governance within Anglesey. It is clear from the Inspection Report that the Council has struggled with issues of governance over a considerable period of time. That places considerable demands on the exercise of the role of Monitoring Officer, particularly when there has been variable managerial and political support for the exercise of that role.

It would also be remiss of me in conducting the review not to record my concern as to the nature of the issues which have been referred to me for review and to the extent of the retrospective scrutiny to which the Monitoring Officer's actions are being subject. It does not reflect an organisation that has the confidence to take responsibility for its own governance. I would be concerned from the nature and extent of the allegations made against the Monitoring Officer that they may be interpreted as undermining a Monitoring Officer who is seeking to assist the Council in maintaining appropriate standards of governance. I do believe there is a need to recognise that the successful discharge of the Monitoring Officer role requires appropriate managerial and political support. The nature, style and content of the references to the Monitoring Officer's discharge of her duties have the potential to leave the Council vulnerable to an employment law challenge. I emphasise that I make those assessments based on the examination of the eight issues which have been referred to me.

Neil Pringle

January 2010



DAVID J BOWLES, C.P.F.A., B.Sc.  
Rheolwr Gyfarwyddwr Dros Dro  
Interim Managing Director

CYNGOR SIR YNYS MÔN  
ISLE OF ANGLESEY COUNTY COUNCIL  
Swyddfa'r Sir  
LLANGFNI  
Ynys Môn - Anglesey  
LL77 7TW

**Strictly Private and Confidential**

ffôn / tel: (01248)752100 ffacs / fax: (01248) 750839

Gofynnwch am - Please ask for: June Williams

ffôn / tel (01248) 752102 ffacs / fax (01248) 750839

E-Bost - E-mail:  
Ein Cyf - Our Ref.  
Eich Cyf - Your Ref.

19/02/2010

Dear Councillor

### **Undermining the Monitoring Officer**

When I took up my appointment as the Council's Interim Managing Director I received a number of 'complaints' against the Monitoring Officer.

All of the complaints were made by Members, though most were made by one particular Member. A number seemed to be hearsay and were potentially repeating the concerns expressed by that one Member. The main complainant went as far as describing Ms Ball as 'not fit for purpose'.

The allegations included claims of undue influence on the Council's external auditors; impropriety in correspondence/evidence provided to the Public Services Ombudsman in connection with his enquiries; collusion with a leading member of the Opposition; inconsistent use of discretion on the issue of section 5A/5 reports; unauthorised/inappropriate disclosure of information and the misuse of the Standards Committee to place information in the public domain.

Such allegations into the competency of such a key post cannot be left unresolved. In response, I instructed a suitably qualified independent person who has been both a Monitoring Officer and Chief Executive, and who has worked with the WAO, to carry out a peer review into the work of the Monitoring Officer covering issues such as those above.

That investigation is now completed and has shown that in all cases Ms Ball acted appropriately and professionally and with a high degree of competence and skill. This is consistent with Ms Ball's high standing outside of the Council and my own review of documents.

The role of Monitoring Officer is a difficult one which can be perceived as obstructive even though the purpose of the advice given is to keep members within the law and various Codes.

The Investigator has also drawn to my attention his concern that the pursuit of these allegations, against the Monitoring Officer, exposes the Council to a risk of employment related litigation.

I endorse that analysis but would go further. I believe that the Monitoring Officer has been the subject of a concerted campaign of bullying and harassment. I find this conduct abhorrent and totally at odds with the Council's legal obligations as employer. If Ms Ball were to seek claims against the Council for her treatment I have no doubt that there would be a genuine prospect of the Council losing such a claim. If such claims were brought under the appropriate legislation the claims would be uncapped and possibly run well into seven figures. We therefore have obligations not just to Ms Ball as an employee but also a duty to Council tax payers to ensure that this situation does not arise.



While I have received no indication from the Monitoring Officer that she intends to take legal action, should she do so, recovering compensation against the Council, then the Council will be seeking financial indemnity from any members who have played a part in what has the appearance of a poisonous vendetta.

As far as the Council is concerned, the allegations discussed above are now a "dead letter". If any member raises these issues again I shall consider such action to be evidence of serious misconduct and I shall personally report that member to the Ombudsman, requesting that they be referred to the Adjudication Panel for Wales.

This continuing conduct, by a few members, and especially one member, strikes at the heart of issues highlighted in the Corporate Governance Inspection Report (eg paras. 4, 5, 8, 20, 21, 23, 31, 34). The fact that it persists many months after publication of the Auditor's Report will be a matter of grave concern to the Minister and the Recovery Board. If this Council is to stand any chance of moving forward it must also be a matter of equal concern to those members (undoubtedly the significant majority) who seek to act in good faith and in the best interests of the Council and the public it serves.

I have written separately to the main complainant rejecting the allegations and drawing attention to the highly corrosive effects that whispering campaigns can have, that I will not tolerate such campaigns and drawing their attention to the potential financial implications for them personally. Given the number of allegations made by that one member it seems highly unlikely that they were made in good faith.

It should be noted that, in addition to the legal risk that such conduct poses to the Council, together with the damage it causes to relationships between members and officers, this kind of behaviour is hugely wasteful of resources, both in terms of the direct cost of engaging external investigators but also in the officer time which is diverted from more productive purposes.

It is important that officers are held accountable for their performance and reports going to the next County Council meeting will put in place appropriate mechanisms to appraise officers. If any member wishes to make a complaint against any officer, now or in the future, any such complaint will be rejected unless it is put in writing, signed, and supported by evidence. Any member, who is also a member of a group, will also be expected to have such a complaint endorsed in writing by their Group Leader.

If any member is aware of continuing attempts to undermine any officer they should advise the member to use the proper processes; if the member fails to do so it will clearly point to improper motives. I hope you will not tolerate officers being undermined simply for doing their job properly and professionally.

Finally I regret again having to write in these terms and no doubt if my position starts to be undermined will be evident why.

Yours sincerely



**DAVID J BOWLES**  
**INTERIM MANAGING DIRECTOR**



Cynghorydd/Councillor E Schofield  
Olgra  
Marianglas  
Ynys Môn  
LL73 8PL

19/02/2010

**CWBL BREIFAT A CHYFRINACHOL**  
**STRICTLY PRIVATE AND CONFIDENTIAL**

Annwyl Gynghorydd Schofield

Gyda'r llythyr hwn mae eich copi chi o'r llythyr cyffredinol yr ydym yn ei yrru at yr holl aelodau etholedig.

Hwn yw'r llythyr y cyfeiriaf ato yn y pumed paragraff ar dudalen 2 y llythyr cyffredinol.

Rydwyf wedi gwrando'n ofalus ar beth yr oedd gennych i'w ddweud, ac mi welwch o ddarllen y llythyr amgaeedig fy mod i wedi gwneud defniadau i ymchwilio'n fanwl i'r cyfryw haeriadau. Canfuwyd nad oedd sail i'r materion a godwch nac i'r haeriadau a wnewch yn erbyn Lynn Ball fel Swyddog Monitro.

Mae'r nifer fawr o faterion a godwch, natur y materion hynny a'ch dull chwi o fynegi'r cyfryw faterion i mi wedi achosi i mi gryn bryder ac yn anorfod maent yn codi amheuan difrifol ynghylch eich cymhellion wrth eu codi gyda mi.

Mae gwneud haeriadau di-sail yn cael effaith hynod niweidiol ac fe ddylech wybod fy mod yn gwbl o ddifrif ynghylch diogelu fy staff rhag erledigaeth gan aelodau. Rydwyf yn pwyso arnoch i nodi'n ofalus fy sylwadau yn y llythyr yr ydwyf yn ei yrru at yr holl aelodau, ac yn arbennig felly y materion hynny ynghylch atebolrwydd personol yr aelodau a'r ffaith fy

DAVID J BOWLES, C.P.F.A., B.Sc.  
Rheolwr Gyfarwyddwr Dros Dro  
Interim Managing Director

CYNGOR SIR YNYS MÔN  
ISLE OF ANGLESEY COUNTY COUNCIL  
Swyddfa'r Sir  
LLANGEFN  
Ynys Môn - Anglesey  
LL77 7TW

ffôn / tel: (01248) 752100 ffacs / fax: (01248) 750839

Gofynnwch am - Please ask for: June Williams

ffôn / tel: (01248) 752102 ffacs / fax: (01248) 750839

E-Bost - E-mail:  
Ein Cyf - Our Ref.  
Eich Cyf - Your Ref.

Dear Councillor Schofield

With this letter will be your copy of a general letter that I am sending to all elected members.

This letter is the one I refer to in the fifth paragraph on page 2 of the general letter.

I have listened carefully to what you have said and, as you will see from the enclosed letter, I have had allegations that you made investigated in some depth. It has been found that there is no substance to the issues that you have raised and the allegations that you made against Lynn Ball as Monitoring Officer.

The very number of issues that you raised, their very nature and the way in which you expressed them to me have caused me great concern and must, inevitably, raise serious doubts as to your motive in raising them with me.

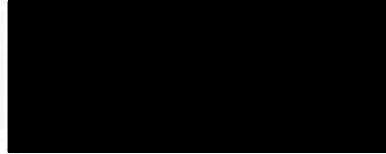
The making of unfounded allegations has a highly corrosive effect and you should be aware that I take protecting my staff from harassment by members very seriously. I urge you to take careful note of the comments in the letter I am sending to all members, especially those as regards matters of the personal liability of members and my

Os byddwch yn parhau i gyflwyno haeriadau di-sail sy'n tanseilio swyddog, yna byddaf yn cyflwyno'r llythyr hwn i'r Ombwdsmon neu i unrhyw awdurdod priodol arall fel tystiolaeth eich bod wedi cael rhybudd ynghylch goblygiadau'r materion hyn, a hynny'n cynnwys y posibilrwydd o atebolrwydd personol.

Yr eiddoch yn gywir

You should be aware that should you continue to make unfounded allegations that undermine an officer, this letter will be made available to the Ombudsman or any other appropriate authority as evidence that you have been warned of the consequences in relation to these matters, including the prospects of personal liability.

Yours sincerely



**DAVID J BOWLES**  
**RHEOLWR GYFARWYDDWR DROS DRO**  
**INTERIM MANAGING DIRECTOR**