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REPORT

by the

**PUBLIC SERVICES OMBUDSMAN FOR
WALES**

on an

INVESTIGATION INTO AN ALLEGATION

against

Councillor Barrie Durkin

of

Isle of Anglesey County Council

PUBLIC SERVICES OMBUDSMAN FOR WALES

Report by the Public Services Ombudsman for Wales on the investigation of an allegation made against Councillor Barrie Durkin of Isle of Anglesey County Council, of a breach of the Council's statutory code of conduct for members

THE ALLEGATION(S) INVESTIGATED

1. On 20 April 2010 I received an allegation from Mr. David Lewis-Roberts that Councillor Barrie Durkin had failed to observe the code of conduct for members of Isle of Anglesey County Council. It was alleged that on 6 April 2010 Councillor Durkin sent an email to a number of persons including County Councillors and Council staff in which he made the following statement:

"It's little wonder that the likes of ex, Councillor David Lewis-Roberts, was being able to corrupt the Planning Committee on a number of occasions, with complete immunity (which he has now admitted to)."

2. Mr. Lewis-Roberts alleges that this statement is untrue and that in making it Councillor Durkin has breached a number of the paragraphs of the Code of Conduct for Members. A copy of the allegation is attached at Appendix A.

3. I subsequently received additional information from Mr. Lewis-Roberts on 27 April 2010 that Councillor Durkin had made further untrue and unsubstantiated comments about him on "The Druid of Anglesey" local blog dated 25 April 2010 ("the Druid blog"). In particular, Councillor Durkin commented that during an ITV programme "Wales this Week" on 3 November 2008 "*David Lewis-Roberts openly admitted that he'd told lies, and admitted to everything i'd (sic) accused him of.*"

4. A copy of the additional allegation is attached at Appendix B.

LEGAL BACKGROUND

5. As required by Part III of the Local Government Act 2000 (the Act), the Isle of Anglesey County Council ("the Council") has adopted a code of conduct for members which incorporates the provisions of a model code contained in an order made by the Welsh Ministers. A copy of that code is at Appendix C. Council members are required to sign an undertaking that, in performing their functions, they will observe the Council's code of conduct. Councillor Durkin gave such an undertaking on 2 May 2008. A copy of that declaration is attached at Appendix D.

6. Section 69 of the Act provides the authority for my investigation and the production of this report.

MY INVESTIGATION

7. Having considered the allegation as made to me, I concluded that it was appropriate to investigate whether Councillor Durkin had failed to comply with any of the following provisions of the Code of Conduct:

"2. (1) Save where paragraph 3(a) applies, you must observe this code of conduct –

(b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;

4. You must –

(b) show respect and consideration for others;

6.—(l) you must –

(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

8. Councillor Durkin was accordingly informed of my intended investigation on 3 June 2010. A copy of the letter is attached at Appendix E. I subsequently received information from the Council that an omnibus complaint was in the process of being drafted against Councillor Durkin (see Appendix F). I therefore decided to suspend my investigation of the initial complaint against Councillor Durkin until such time as the omnibus complaint was received and assessed. Councillor Durkin was notified of the suspension on 15 June 2010. A copy of the letter is attached at Appendix G.

9. On 24 August 2010 Councillor Durkin was informed that the investigation into the initial complaint would resume. (see Appendix H). The omnibus complaint against Councillor Durkin is dealt with in a separate investigation report.

10. During my investigation I have obtained written information from the Monitoring Officer of the Council. I also obtained a copy of the ITV programme referred to by Councillor Durkin in his statement on the Druid blog. A copy of the programme is attached at Appendix I. A transcript of the comments made by Mr. David Lewis-Roberts and Councillor Durkin during the programme is attached at Appendix J. Mr. David Lewis-Roberts was interviewed on 5 October 2010. A copy of the handwritten interview notes are attached at Appendix L. On the basis of the information obtained from Mr. Lewis-Roberts a typed statement was prepared, the signed statement and addendum to it was received from Mr. David Lewis-Roberts on 3 November 2010 and are attached at Appendix M.

11. I have not reported on all matters investigated. Copies of all statements and documents referred to in this report are attached, although where necessary they have been edited to exclude matters which are not the subject of this report.

12. I have put the evidence found by my investigation to Councillor Durkin, enabling him to review that evidence before responding to the questions which I put to him.

13. I have given Councillor Durkin the opportunity to comment on a draft of this report which included my provisional views and finding.

MY GUIDANCE ON THE CODE

14. I issued guidance for members of local authorities in Wales on the Model Code of Conduct in April 2010 ("my guidance"). I include below extracts of the guidance as it applies to this complaint.

"Treating others with respect and consideration

Paragraph 4(b)

A member must show respect and consideration for others. Ideas and policies may be robustly criticised by a member, but individuals should not be subject to personal attack. This particularly applies to dealing with members of the public. Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should always treat members of the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives. This is the case in face to face settings such as meetings as well as when communicating by phone, letter, email or other electronic means.

Disrepute

See Paragraph 6.1(a)

A member must not behave in a way which would reasonably be regarded as bringing his/her office or authority into disrepute at any time.

The actions and behaviour of members are subject to greater scrutiny than those of ordinary members of the public. Members should be aware that their actions in both their public and private life might have an adverse impact on your office or their authority.

Inappropriate emails to constituents might well bring the office of member into disrepute also."

EVENTS LEADING TO THE ALLEGATION AS ESTABLISHED BY MY INVESTIGATION

15. In May 2004 Mr. David Lewis-Roberts was elected as a County Councillor of the Isle of Anglesey County Council.
16. Following his election Councillor Lewis-Roberts was appointed to sit on the Planning Committee of the Council.
17. On 28 February 2005 Councillor Durkin became a member of Llanfair Mathafarn Eithaf Community Council; he resigned from the Community Council on 3 August 2006.
18. In May 2008 Councillor Lewis-Roberts lost his seat in the election and Councillor Durkin was elected as a member of the Isle of Anglesey County Council for the Llanbedrgoch ward.
19. On 3 November 2008 a "Wales this Week" programme was aired. The programme contained footage of interviews with Mr. Lewis-Roberts and Councillor Durkin.
20. On 6 April 2011 at 02:15 an email was sent from Councillor Durkin's email account to all elected members of the Council, the email comprised an undated letter addressed to the members of the Council and the Chair of the Recovery Board from Councillor Barrie Durkin.

21. The letter contained the following comments:

"It's little wonder that the likes of ex, Councillor David Lewis-Roberts, was being able to corrupt the Planning Committee on a number of occasions, with complete immunity (which he has now admitted to)."

22. On 25 April 2010 at 22:33 Councillor Durkin posted a comment on the Druid blog. The entry contained the following comments:

" ... in a TV program which he had set up with ITV to try and discredit my good name, on 3.11.08 David Lewis-Roberts openly admitted that he'd told lies, and admitted to everything I'd accused him of.

*Unfortunately because of the ambience of immunity which still exists, David Lewis-Roberts is now through his corrupt activities sitting on some nine acres of land in one of the most prestiges(sic) area of natural beauty on Anglesey worth with Planning permission, without laying a brick some, £10,000,000 or so. Who said crime doesn't pay?
..."*

RELEVANT DOCUMENTS

23. The undated letter sent via email on 6 April 2010 by Councillor Durkin (Appendix N).

24. Extract from "The Druid of Anglesey" blog of 25 April 2010 posted by Councillor Durkin (Appendix O).

25. Statement of Mr. David Lewis-Roberts dated 27 October 2010 together with addendum of 29 October 2010 (see Appendix M).

26. Transcript of the 'Wales this Week' programme of 3 November 2008 (see Appendix J).

27. Anglesey County Council's constitution version 1, 1 May 2008 (Appendix K).

28. Councillor Durkin's training record was provided as part of the investigation by the deputy Monitoring Officer of the Council, a copy is attached at Appendix R.

WHAT THE COMPLAINANT SAID

29. The nature of the allegations against Councillor Durkin largely relate to comments made in a written format. As a consequence of such it was not necessary to obtain any witness evidence in respect of the same. Nevertheless, as part of the investigation the complainant, Mr. Lewis-Roberts was interviewed. I have summarised the comments made by him below.

30. Mr. Lewis-Roberts said that he was a member of the Council from May 2004 until May 2008. He said that he did not know Councillor Durkin prior to his election but he believes that Councillor Durkin took an instant dislike to him.

31. Mr. Lewis-Roberts said that he was on the Planning Committee for a short time and he does not recall ever having to declare an interest in any matter before the Committee.

32. Mr. Lewis-Roberts said that he completely denies Councillor Durkin's allegation that he was able to corrupt the whole Planning Committee. He said that he does not know how he could have done that.

33. He said that of the 14 members of the Planning Committee a number of members formed groups; the majority represented the major political groups. He said that he was not a member of any of the major groups but at one time was part of what he would describe as a "collective". He said however that he would not have been in a position to influence the members of the other larger political groups at all. He said he would not have had the opportunity to influence others as they were largely in party blocks. (I note that Planning Committees are expected to act in a quasi judicial capacity and not to make decisions along party lines).

34. He said that on 6 April 2010 Councillor Durkin sent an email which was attached to a letter to all members of the Council and the Chairperson of the Isle of Anglesey Recovery Board. This letter is undated but he believes it was prepared sometime after 19 February 2010, the letter states that "*I[Mr. Lewis-Roberts] was able to corrupt the Planning Committee on a number of occasions with complete immunity.*"

35. He said that Councillor Durkin stated in the letter that "*I admitted influencing the Planning Committee during an interview with a journalist on the ITV Wales programme, Wales this Week of 3 November 2008. This allegation is untrue. During the interview I was asked by Mr Paddy French, the journalist, whether I helped any of my constituents to get planning. In response I said of course I did, it worked the other way round too, it was part of my job to look at the planning and work out in my mind whether it was feasible or not.*"

36. Mr. Lewis-Roberts said that he also said to the journalist that "*if I thought it was any good I would support it or if not I would go against it.*"

37. Mr. Lewis-Roberts said that his interpretation of the role of a member where planning matters are concerned is to be impartial, not to form a view but to be open to constituents to come along to, to advise and

to indicate whether an application accords with planning policy or not. He said that it was his understanding that if you were not a member of the Planning Committee, you could actively support an application. However, when you were a member of the Planning Committee you could only go so far in supporting an application. He said that in his view a member had to go to the Committee meeting with an open mind and should not have predetermined the matter. He said that he was fiercely independent and that until he went to the meeting and told the Committee what he felt he could not predetermine any application at all. Mr. Lewis-Roberts said that it would then be up to the Committee as a whole to decide what to do. He said that he did not understand how he would be able corrupt the entire Committee as is alleged by Councillor Durkin.

38. Mr. Lewis-Roberts said that shortly after making his complaint he became aware that the Druid blog, contained an extract dated 25 April 2010 which stated that he had '*benefitted from [his] corrupt activities and that [he is] sitting on nine acres of land in one of the most prestigious area of natural beauty on Anglesey worth with planning permission, without laying a brick some ten million pounds or so*'. He said that he laughed at this comment. Mr. Lewis-Roberts said that he does own nine acres of land and this was declared to the Council at the relevant time. He said that he bought the land for fifteen thousand pounds.

39. He said that it was not purchased for the purpose of making a commercial gain. He said that the land does not benefit from planning permission and that it is certainly not as valuable as Councillor Durkin suggests.

40. Mr. Lewis-Roberts said that he believed that the land would be deemed development land in the Local Development Plan ("LDP") when this is passed, if the criterion regarding "clusters" as he understands it is applied.

41. He said that he was advised by the officers at the time he bought the land that it was outside of the Unitary Development Plan ("UDP") and the LDP process had not even been started at that time. He said that he accepts that when the LDP is passed, if his land is included within it and he did secure planning permission, the value of the land could be significantly increased. He said that it is his intention to only ever build a log cabin on it for himself and his wife. He said that he does not consider that he would get planning permission for a number of houses in any event.

42. Mr. Lewis-Roberts said that he is no longer a member of the County Council and does not maintain any regular contact with members of the Planning Committee. He said that he still attends Planning Committee meetings when they are held in the Benllech area, but that this is just a matter of public interest.

WHAT THE DEPUTY MONITORING OFFICER SAID

43. In response to enquiries raised by my investigator the Deputy Monitoring Officer provided a copy of Councillor Durkin's training record by email on 28 April 2011 (see Appendix R). The Deputy Monitoring Officer was also asked to provide further evidence of Councillor Durkin's attendance at the various code of conduct training sessions set out in the record. The Deputy Monitoring Officer was able to provide copies of the attendance register and other documents for training sessions offered to and attended by Councillor Durkin on 30 June 2008 (see Appendix S), 26 January 2009 (see Appendix T) and 28 April 2010 (Appendix U).

WHAT COUNCILLOR DURKIN SAID IN RESPONSE TO THE ALLEGATION

44. My investigator wrote to Councillor Durkin enclosing a series of questions on 15 February 2011 a redacted version is attached at Appendix P (questions relevant to the omnibus complaint have been excluded).

Councillor Durkin's response was received from his appointed representatives Messrs Huttons Solicitors by email on 9 May 2011(see Appendix Q) responses relevant to the omnibus complaint have been excluded. The response to the allegations made by Mr. Lewis-Roberts are summarised below.

45. Councillor Durkin said that he is unaware of having been offered any training in relation to the code of conduct since his election.

46. Councillor Durkin said that in his view former Councillor Mr. Lewis-Roberts called in departure applications to the Planning Committee in a way that breached the Council's Constitution.

47. Councillor Durkin said that during the "Wales this Week" programme of 3 November 2008, there is a reference to a planning application relating to a "plot 1" at Shepherds Hill. He said that having viewed the programme it appears to be undisputed that Mr. Lewis-Roberts spoke to the owner of plot 1 prior to the owners' planning application being considered by the Planning Committee; that Mr. Lewis-Roberts then called in the application to the Committee; that he spoke in favour of the application at the Committee; voted in favour of it and that planning permission was granted.

48. He said that in the programme Mr. Lewis-Roberts states the following;

"I said 'I will do my best for them' and they said 'we want to move because the garden is getting too big', and I said 'okay then', and that's what I went for, and I copped them the planning."

49. Councillor Durkin said that the programme also contains an interview with a local resident who states that there were objections by constituents but that "as far as [Mr. Lewis-Roberts] was concerned, he was

pushing it through". He said that the programme also refers to a view held by other Councillors that Mr. Lewis-Roberts had been lobbied and that he should therefore have declared an interest and not participated in the decision making process. Councillor Durkin refers to paragraph 4.5.1.4, 4.6.25, and 4.6 of the Council's Constitution of 1 May 2008 (see Appendix K). He said that the constitution is clear that a Councillor who is a member of the Planning Committee must not be lobbied by one of his constituents and then subsequently take part in the decision making process in respect of the same. Councillor Durkin submits that based on Mr. Lewis-Roberts' own account in the programme he committed a very serious breach of the Council's Constitution and planning rules. He said that in doing so Mr. Lewis-Roberts was in his view admitting to precisely the involvement in the planning process that he had accused him of.

50. Councillor Durkin said that this was not an isolated incident and that Mr. Lewis-Roberts made a number of departure applications for matters to be 'called in' to the Planning Committee. Councillor Durkin said that on each of these applications Mr. Lewis-Roberts used wording which made it clear that he had already decided to support the applications. Councillor Durkin said that Mr. Lewis-Roberts subsequently spoke in favour of the applications at the relevant Planning Committee meetings and voted in favour of them.

51. Councillor Durkin said that it was actions such as those cited above that he was referring to when he described Mr. Lewis-Roberts as "corrupting the Planning Committee." He considers that he was justified in describing such breaches as amounting to corruption of the Planning Committee. He says that he is not alone in this view as shown by the decision of "Wales this Week" to investigate the decisions of the Planning Committee and Mr. Lewis-Roberts over a period of time and for more than one programme.

52. Councillor Durkin said that on the basis of the account provided by Mr. Lewis-Roberts during the programme of 3 November he effectively admitted to breaching the Council's Constitution and planning rules.

53. Councillor Durkin said that he has never posted a blog entry on the Druid blog. He said that he has inserted comments relating to other individuals' blog entries. He estimates that he has done so on three or four occasions. He said that he is aware that entries have been posted by other persons claiming to be him. Although Councillor Durkin confirms that he was the author of the entry at 22:33 on 25 April 2010, which forms part of the allegations against him, he said that during the Wales this Week programme of 3 November 2008, Mr. Lewis-Roberts is recorded asserting that Paddy French, a journalist gave him the idea of buying a nine acre plot of land in the same area as the plots for which he had supported planning approvals.

54. Councillor Durkin said that when it was put to Mr. Lewis-Roberts by the programme-makers that this cannot be true, he acknowledges that what he said was untrue, albeit adding that it had been said as "a joke". Councillor Durkin said that Mr. Lewis-Roberts accepts that his statement was untrue. He said that Mr. Lewis-Roberts accepted on the programme that he had lied.

55. Councillor Durkin said that his comment on the blog about the value of the land was that it would easily be in the region of £10,000,000 if planning permission for development was granted. He said that he had extensive knowledge of the value of land in the area at the time. He said that eight or nine acres could be split into 100 plots and that each plot would then be worth in the region of £100,000.

56. Councillor Durkin said that the statement "through corrupt activities" was that Mr. Lewis-Roberts was in his view in possession of land worth

£10,000,000 through corrupt activities. He said that in his view the likelihood of Mr. Lewis-Roberts obtaining planning permission that would make the land worth £10,000,000 had been significantly increased as a result of the planning precedents established in the area via the departure applications called in by Mr. Lewis-Roberts. He said that in his view these planning permissions [precedents] were called in and supported by Mr. Lewis-Roberts in a manner which constituted a serious breach of planning rules and the Constitution.

57. Councillor Durkin said that although the word “potentially” was omitted in relation to the value of the land, his statement on the blog entry was not misleading. He said that it is correct that Mr. Lewis-Roberts is in possession of land that would be worth £10,000,000 with the grant of planning permission and that this is much more likely through his actions because he had actively supported the approval of the applications in the same area.

COUNCILLOR DURKIN’S RESPONSE TO THE DRAFT REPORT

58. Councillor Durkin disputes the evidence provided by Mr. Lewis-Roberts in the statement attached to this report. In particular he rejects the assertion by Mr. Lewis-Roberts that he did not purchase his nine acres of land for the purpose of making a commercial gain. Councillor Durkin said that he finds this statement extremely difficult to accept in view of the fact that in January 2009 Mr. Lewis-Roberts applied for the land to be placed on the Candidate Sites Register relating to the Local Development Plan, indicating that the proposed use of the land would be ‘housing’.

59. Further, in his statement Mr. Lewis-Roberts said that his ownership of the land was declared to the Council at the relevant time. However, Councillor Durkin is aware that Mr. Lewis-Roberts did not purchase the land until 14 May 2008, by which time he was no longer a member of the Council. However, Councillor Durkin believes that Mr. Lewis-Roberts had paid a deposit on the land in 2006 and therefore in his view should have in

his view declared an interest as and when he would have been required to do so.

60. Councillor Durkin said that there is no minute or other record which shows proves that Mr. Lewis-Roberts did declare any interest in the land or in relation to any potential conflict arising from support of planning applications submitted by constituents seeking consent to develop sites adjacent to his nine acres of land.

61. Councillor Durkin alleges that Mr. Lewis-Roberts had particularly strong ties to one member of the public and actively sought the approval of multiple applications submitted by this individual whilst Mr. Lewis-Roberts was a member of the LDP panel. Councillor Durkin said that the nine acres of land subsequently acquired by Mr. Lewis-Roberts is located in the same area as the land belonging to this particular member of the public. Councillor Durkin considers that Mr. Lewis-Roberts's involvement with this person amounts to an interest and as a consequence of this and his interest in his nine acres he should not have been involved in the planning application decision making process. Councillor Durkin has provided a copy of a grazing agreement entered into by this individual and which Mr. Lewis-Roberts witnessed, as evidence of their involvement.

62. Councillor Durkin maintains that his comments relating to Mr. Lewis-Roberts were justified in view of the level of impropriety suggested by evidence he has submitted to defend the allegations against him. He considers that it is important to note that many of the departure applications approved whilst Mr. Lewis-Roberts was a member of the LDP panel were overturned on review. Councillor Durkin believes that impropriety pervaded the processing of these applications and that it was in the public interest to bring this and other matters to light.

63. Councillor Durkin considers that he is being persecuted simply for using somewhat potent (but fair) language to expose the highly inappropriate behaviour of certain Council members.

64. A copy of Councillor Durkin's response to the draft report is attached at Appendix V.

FURTHER INFORMATION OBTAINED FROM THE COMPLAINANT

65. Following receipt of Councillor Durkin's comments on the draft report my investigator wrote to Mr. Lewis-Roberts on 15 August 2011 to clarify some points which had arisen. A copy of the letter is attached at Appendix W.

66. The following questions were put to Mr. Lewis-Roberts:

- a. When did you first obtain an interest in the nine acres of land lying to the north of Pant y Bugail, Tyn-Y-Gongl?
- b. When and how did you pay the deposit for the land?
- c. Your statement contains the following comment:
"I do own nine acres of land and this was declared at the time." Please confirm when and how you made this declaration.

67. My investigator spoke with Mr. Lewis-Roberts on the telephone on 17 August 2011, following his receipt of the letter. During the conversation Mr. Lewis-Roberts stated that he paid a cash deposit for the nine acres of land in April 2007 in the sum of £2,000 and thereafter made payments of £1,000 per month to the Vendor, who was the member of the public referred to by Councillor Durkin in paragraph 61 above.

68. Mr. Lewis-Roberts also said that at the time he mentioned his purchase to the Monitoring Officer and as a consequence he felt that he had declared his interest. Mr. Lewis-Roberts said that he is of the view that

the code of conduct which was applicable at the relevant time did not require him to register his interest in the land in the same manner that he is required to under the current code. A copy of the telephone attendance note is attached at Appendix X.

69. On 17 August 2011 Mr. Lewis-Roberts sent a letter to my investigator setting out his written responses to the questions above. A copy of the letter is attached at Appendix Y.

70. In the letter Mr. Lewis Roberts states that the questions posed in the letter of 15 August 2011 are "invalid". He said that at the relevant time he was not required to declare any land/property interest or information that was considered to be personal and private. He said that at the time he went to declare his interest to the legal department but was advised that there was no requirement to do so. Mr. Lewis-Roberts provided a copy of a letter received from the Monitoring Officer on 26 August 2004 to support his view. A copy is attached at Appendix Z.

71. Mr. Lewis-Roberts provided a copy of a declaration of personal interest dated 9 April 2008. The declaration form states he declared an interest at a Planning and Orders Committee meeting in relation to "Ffrith, Shepherds Hill, Tynygonol, Benllech. The entry upon the form states the reason for the declaration:

"Being the local member and only today being appointed to the Planning Committee."

72. A copy of the declaration, together with the minute of the Committee meeting and details of the planning application are attached at Appendix A2.

UNDISPUTED FACTS

74. Councillor Durkin signed his acceptance of the terms of the members' code of conduct for Anglesey County Council on 2 May 2008.

75. Councillor Durkin wrote the email of 6 April 2010, and attached an undated letter to elected members and the Chair of the Recovery Board. Councillor Durkin sent the email containing the letter to all elected members on 6 April 2010.

76. Councillor Durkin posted the comment on the Druid blog created at 22.33 on 25 April 2010.

DISPUTED FACTS

a) Did Councillor Durkin attend training sessions offered by the Council on the code of conduct for members on 30 June 2008, 29 January 2009 and 28 April 2010?

b) Was Councillor Durkin bound by the code of conduct when he composed and sent the email of 6 April and posted the blog comment of 25 April 2010?

c) If so, in making the remarks relating to Mr. Lewis-Roberts has Councillor Durkin failed to show respect and consideration to him?

d) Is Councillor Durkin's conduct in making the remarks relating to Mr. Lewis-Roberts contained in the email and the blog entry capable of bringing the Council or the role of member into disrepute?

ANALYSIS OF EVIDENCE

a) Did Councillor Durkin attend training sessions offered by the Council on the code of conduct for members on 30 June 2008, 29 January 2009 and 28 April 2010?

77. The information I have received from the Deputy Monitoring Officer states that Councillor Durkin attended code of conduct training sessions delivered on behalf of the Council on each of the dates referred to above. However in the response to the questions put to him by my investigator, Councillor Durkin denies having attended and does not recall the offer of any such training since his election.

78. The Deputy Monitoring Officer has provided copies of documents completed by Councillor Durkin in respect of each of the sessions identified in the training record. Each of these documents bears Councillor Durkin's handwritten name and, in respect of the appraisal forms, his views of the training. I consider that these documents provide conclusive evidence of his attendance on each occasion. I am therefore satisfied that Councillor Durkin has received training on the code of conduct for elected members.

- a) Was Councillor Durkin bound by the code of conduct when he composed and sent the email of 6 April and posted the blog comment of 25 April 2010?

79. Paragraph 2(1) (b) of the Code says that members must observe the code whenever they act, claim to act or *give the impression they are acting* (my emphasis) in the role of member to which they were elected or appointed.

80. The email of 6 April 2010 was sent by Councillor Durkin and signed off using his title as Councillor. Similarly, Councillor Durkin's comment on the Druid blog site on 25 April 2010 also contains a reference to his Councillor title.

81. I am therefore in no doubt that Councillor Durkin was acting in the capacity of a councillor when drafting and sending/posting the comments contained in both the email and blog entry.

b) If so, in making the remarks relating to Mr. Lewis-Roberts has Councillor Durkin failed to show respect and consideration to him?

Email 6 April 2010

82. In this email Councillor Durkin comments that Mr. Lewis-Roberts was "*able to corrupt the planning committee on a number of occasions*" he also comments that "*he [Mr. Lewis-Roberts] ... has now admitted to*" doing so. In response to the questions put by my investigator, Councillor Durkin said that Mr. Lewis-Roberts admitted to corrupting the Planning Committee on the Wales this Week programme and that this is what he was referring to in the email to the elected members sent on 6 April 2010.

83. The evidence from Mr. Lewis-Roberts is that this allegation is untrue. He said that during the interview he confirmed that he had helped some of his constituents to get planning permission, he said that he considered this "part of his job". He said that it was his role to attend Planning Committee meetings with an open mind and not to have predetermined the matter. Mr. Lewis Roberts said that the Committee as a whole would determine applications and denied that he ever did or ever would be able to 'corrupt' the fourteen members of the Committee as Councillor Durkin has suggested.

84. My guidance specifically deals with the need for objective decisions in relation to paragraph 8 of the code. I make the distinction between predetermination and predisposition. I specifically state that members should, when taking part in meetings or arriving at decisions, do so with an open mind and objectively. Having a completely closed mind is known as predetermination. However, in my view members are entitled to hold a

preliminary view about a particular matter in advance of a meeting, a predisposition, as long they or she keep an open mind and are prepared to consider the merits of all the arguments and points being made about the matter under consideration before arriving at a final decision. On the basis of his evidence Mr. Lewis-Roberts appears to understand this distinction.

85. The phrase "corrupting the Committee" suggests that Mr. Lewis-Roberts applied pressure on the Committee members designed to influence their decision.

86. The definition of corruption (Oxford dictionary) is:

"dishonest or fraudulent conduct by those in power, typically involving bribery."

87. Councillor Durkin suggests that Mr. Lewis-Roberts admitted to corrupting the Committee during the programme, I do not share this view. In responding to questions Councillor Durkin makes a valid point that Mr Lewis-Roberts acknowledges speaking to the applicants about their applications, and agreeing to speak in favour of them. However, my interpretation of his remarks on the programme is that he said he had 'got' them planning permission as opposed to 'copped' them the planning permission as suggested by Councillor Durkin.

Druid blog comments of 25 April 2010

88. The comments which Councillor Durkin accepts he posted on the Druid blog again contain references to Councillor Durkin's interpretation of Mr Lewis Roberts's comments during the Wales this Week programme.

89. The blog entry suggests that Mr. Lewis-Roberts admits telling "*lies*" and "*admitted to everything [Councillor Durkin] had accused him of*".

90. In response to a written question Councillor Durkin qualified this statement by referring to Mr. Lewis-Roberts's comment about Paddy French, giving him the idea to purchase land during a previous interview. Councillor Durkin refers to Mr. Lewis-Roberts's retraction and description of the comment as a 'joke' as evidence that he 'lied' during the programme.

91. Mr. Lewis-Roberts acknowledges that he made the statement concerning Paddy French in a conversation with his wife which formed part of the programme. He subsequently said it was "a joke". At no time during the programme does Mr. Lewis-Roberts say that he lied in his previous denial of any of the allegations made by Councillor Durkin against him. This is the inference from Councillor Durkin's comment on the blog entry which does not in my view provide an accurate reflection of Mr. Lewis-Roberts's comments during the programme.

92. The blog entry also refers to Mr. Lewis-Roberts's land and its value with planning permission. Councillor Durkin suggests in the blog entry that Mr. Lewis-Roberts acquired this land through corrupt and criminal activity whilst he was a Councillor.

93. Mr. Lewis-Roberts has confirmed that he does own nine acres of land. He said that he laughed at Councillor Durkin's suggestion as to the value of the land. He said that he does not have planning permission on the land. Mr. Lewis-Roberts states that the land is certainly not as valuable as Councillor Durkin suggests on the blog but acknowledges that the value of the land could increase significantly if it is designated for residential use in the Local Development Plan in the future.

94. In both forms of written communication Councillor Durkin uses phrases such as "corrupt" "lies" and "crime" when referring to Mr. Lewis-Roberts. Each of these words gives rise to negative connotations about a

person's character. To suggest that a person is corrupt or the perpetrator of unlawful or criminal acts is a very serious allegation to make and one which I consider should not be made lightly. Language of this nature is capable of causing offence and causing irreparable damage to a person's reputation.

- c) Is Councillor Durkin's conduct in making the remarks relating to Mr. Lewis-Roberts contained in the email and the blog entry capable of bringing the Council or the role of member into disrepute?

95. Councillor Durkin asserts that all of the comments made by him regarding Mr. Lewis-Roberts are justified and made with the aim of restoring the reputation of Anglesey County Council; that the code does not preclude councillors from voicing concerns; that he has referred concerns internally and to the Ombudsman, in the past, and states that all the statements he has made have been substantiated, made in good faith and with a positive purpose in mind.

96. The comments/views expressed by Councillor Durkin were made in two forms.

1) The email of 6 April 2010, which had appended to it the undated letter to members and the Chair of the Recovery Board. This letter was circulated to all members of the Council by email. It was not marked as "confidential", nor was any restriction placed on the recipient in terms of disclosure.

2) The entry on the Druid blog site on 25 April 2010 is a public site, which any member of the public can access without restriction.

97. Councillor Durkin does not deny making any of the comments which are the subject of this investigation.

98. It is a matter of public record that in July 2009, the Wales Audit Office issued a critical Corporate Governance Inspection Report regarding the Council. In the aftermath of the report, the Welsh Assembly Government intervened in the management of the Council.

CONCLUSIONS

99. In reaching my conclusions on this matter I have firstly considered whether Councillor Durkin was acting in the capacity of member when creating/sending the email of 6 April and creating/posting the blog entry of 25 April 2010. I am in no doubt that Councillor Durkin was acting in his capacity as a Councillor in creating and sending the email and posting the blog entry by virtue of the fact that he used the title Councillor in both and would therefore have been bound by the terms of the code of conduct on both occasions.

100. For ease of reference I shall refer to the allegations in the context of the two forms of communication used by Councillor Durkin.

Email of 6 April 2010

101. My interpretation of Mr Lewis-Roberts's comments during the programme do not accord with the interpretation that Councillor Durkin has given them when writing this email.

102. It is possible that Mr. Lewis-Roberts's actions may have been contrary to the rules of the Constitution insofar as "lobbying" is concerned. It is not my role however to consider whether his actions on these occasions were capable of amounting to a breach of the Council's Constitution. Further, in my view it does not necessarily follow that a breach of the Constitution will always amount to a breach of the code of conduct.

103. I do consider that there is also some basis for Councillor Durkin's concern regarding the number of departure applications called in by Mr. Lewis-Roberts and what appear to be failings on his part to declare his personal interests when attending meetings of both the Planning Committee and the LDP Committee. It is of note that Mr. Lewis-Roberts appears to have entered into a contractual relationship for the purchase of his nine acres of land in April 2007, he confirmed that this contractual arrangement continued until May 2008 when the transaction was completed. Councillor Durkin makes a valid point that Mr. Lewis-Roberts would have been required to make the declarations of a personal interest during the intervening period as and when it was necessary to do so. Mr. Lewis-Roberts would have been required to declare a personal interest on any occasion that the Planning Committee or the LDP Committee considered matters which related to the nine acres of land and/or any land in which he had a beneficial interest and which was in the area of the authority. However, there are no records to suggest that he did so. However, whilst there is justification for Councillor Durkin's concern about Mr. Lewis-Roberts's conduct whilst he was a member, this concern cannot detract from the nature of the allegations against him., Fundamentally, the information provided by Councillor Durkin and subsequently obtained does not provide direct evidence to support the key points of the accusations made by Councillor Durkin in the email that Mr. Lewis-Roberts was "corrupting the Committee". I have seen no evidence to suggest that he attempted to influence the decisions of the members of the Planning Committee in a way which would be consistent with the word "corrupting". I consider that the accusation of corruption is a serious matter which can only be considered to be a personal attack upon Mr. Lewis-Roberts.

Druid Blog entry 25 April 2010

104. Again, my interpretation of Mr. Lewis-Roberts' comments is somewhat different to that of Councillor Durkin. The comment about Paddy French is correct to a point; Mr. Lewis-Roberts has confirmed that

Paddy French did not give him the idea to purchase the land and that he had intended his comment along these lines to be a joke. Councillor Durkin may not consider that this comment was made in jest, however taken in the context of the conversation the acknowledgement, does not in my view, amount to the admission of lies as interpreted by Councillor Durkin. However, the implication made by Councillor Durkin on the blog is that he [Mr. Lewis-Roberts] had admitted to telling lies relating to all of the allegations made by Councillor Durkin. Having viewed the programme, I do not consider that there is any other direct evidence that Mr. Lewis-Roberts admitted telling 'lies' to justify Councillor Durkin's comment on the blog site.

105. Councillor Durkin refers to corrupt activities in the context of Mr. Lewis-Roberts's acquisition of nine acres of land. I consider that Councillor Durkin's assertions about the potential value of the land (with the grant of planning permission) are reasonable and agree that the word 'potential' should have been used by him and that it is regrettable that he failed to use this word. I do not see anything wrong with Councillor Durkin making reference to the land ownership and its potential worth however the use of the phrase '*through his corrupt activities*' is in my view unsubstantiated and unfair. The language used goes beyond what can reasonably be expected from an elected member.

106. Councillor Durkin also accuses Mr. Lewis-Roberts of acquiring his land by means of criminal activity. Again I consider that this is a very serious allegation which has the potential to cause reputational damage. Councillor Durkin has not provided any direct evidence to show that Mr. Lewis-Roberts purchased the land through any criminal or corrupt activities as he suggests. He appears to rely on speculation.

107. I accept that Mr Lewis Roberts's behaviour whilst he was a member is of concern to Councillor Durkin and that there is some historical

animosity between the parties. The issues highlighted by Councillor Durkin in response to the draft report do inevitably impact upon Mr. Lewis-Roberts's integrity, but cannot be allowed to detract from the nature of the allegations against Councillor Durkin. I consider that the language used by Councillor Durkin to express his concerns was intemperate and goes beyond what could reasonably be regarded as normal and acceptable

108. I am therefore satisfied that Councillor Durkin's comments about Mr. Lewis-Roberts in both the email and blog entry are capable of demonstrating a failure to show respect and consideration and may be capable of breaching 4(b) of the Code.

109. Councillor Durkin in both the email and the blog site has openly and publicly criticised Mr Lewis-Roberts and, in my view by implication has accused, the other 14 Planning Committee members involved in the departure applications referred to the Committee by Mr. Lewis-Roberts during his time as a member of "corruption". He considers that his criticism of Mr. Lewis-Roberts was justified and substantiated. I do not share this view. I do not doubt Councillor Durkin's commitment to the restoration of the reputation of the Council but I consider that the manner he employed to express his concerns can only have had the effect of lowering the public's expectations and confidence in their elected members. Councillor Durkin's open and public criticism of Mr Lewis-Roberts has taken the form of an email which he sent to all elected members of the Council and in the posting of comments on the Druid blog site which is accessible by the public at large.

110. It is widely know that the Council has experienced difficulties in the past particularly in relation to its planning regime. However, I consider that Councillor Durkin's repetition of the historic and unsubstantiated allegations can only have an adverse affect upon the public's perception of the Council. I am satisfied that his actions in commenting on these issue in the way he did could have the effect of bringing the authority into disrepute

at a time when it is trying to recover from the problems of the past. I am therefore satisfied that Councillor Durkin's comments about Mr. Lewis-Roberts and most importantly by implication the Planning Committee could be capable of bringing the Council into disrepute and thus are suggestive of a breach of paragraph 6(1)(a) also.

FINDING

111. My finding under section 69 of the Local Government Act 2000 is that my report on this investigation should be referred to the Monitoring Officer of the Isle of Anglesey County Council, for consideration by the Council's Standards Committee.



PETER TYNDALL
Ombudsman

30 August 2011

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Appendix

A

Code of conduct complaint form

Please use black ink if possible and fill in your name in BLOCK CAPITALS.

A Your details

Your name in full DAVID AERON LEWIS-ROBERTS

Address and postcode 28 CRAIG Y DON

BENLLECH BAY

ISLE OF ANGLESEY. LL74 8TB

E-mail

Daytime contact number Mobile number

B Who are you complaining about?

Name of the member (or members) you consider has (have) broken the code of conduct

BARRIE DURKIN

Name of their authority

ISLE OF ANGLESEY COUNTY COUNCIL

C How do you think they have broken the code of conduct?

Please tell us what evidence you have for claiming that the member has broken the code of conduct (you can get copies of the code from the authority). Give as much detail as possible and continue on a separate sheet if you need to. Please attach copies of any relevant correspondence, documents and so on.

COPY E-MAIL SENT BY BARRIE DURKIN AS EXPLAINED, AND MY ATTACHED ~~ED~~ ~~BY~~ MY ATTACHED LETTERS AND CONTAINED IN MY ATTACHED LETTER.

28 CRAIG Y DON,
BENLLECH BAY,
ISLE OF ANGLESEY,
LL74 8TB.
Tel. No. :-
Email Add. :-

FAQ:- Andrew Walsh Esq.

16th of April 2010

Re. County Councillor Barrie Durkin's Email. (Copy enclosed)

Dear Sir.

Please find enclosed a copy of an e-mail sent out by Barrie Durkin at approx. 2.15AM on Tuesday the 6th of April 2010 to the other County Councillors of the Isle of Anglesey County Council and I also understand that most of the County Council's staff have either read it or are fully aware of all its contents. I have also been contacted by the local press who have seen his e-mail and I have not replied or made any comments to them.

This surely breaches the Council's Code of Conduct in many areas which I will highlight later. If you notice in the 6th paragraph he maintains that I "was able to corrupt the planning Committee on a number of occasions, with complete immunity (Which he has now admitted to)". I have never even attempted to corrupt the Planning Committee and could not corrupt fourteen (14) individuals, I find it very difficult to find one time that I could even try and corrupt them let alone numerous times and even bizarrely with complete immunity !!!!!. I have never admitted to ANYONE that I did this as I could NOT admit to something which I have NEVER DONE and has NEVER HAPPENED, again these are made up stories, lies and innuendoes that this person has instigated against me since 2004 without ANY EVIDENCE whatsoever as you will be aware of.

The reason I highlighted the above (last part of previous paragraph) is that you should be aware of Barrie Durkin's bizarre claims (again as said without any shred of any evidence) and that over 20 leaflets were sent out by him to constituents in the two wards of Benllech between 2004 and 2008 to which I had to bring to your attention because they were in your words libellous. In one complaint you warned him and in another complaint he was brought in front of the Standards Committee by you where he was severely censured.

I consider that Barrie Durkin has seriously breached the County Council's Code of Conduct for members on the following sections etc..

Part 5 CODES AND PROTOCOLS

5.1 The Model Code of Conduct.


Part -2 General Provisions

2. (1), (a) and (d).

4. (b), (c) and (d).

6. (1) (b), (c), (d).

7. (a), (b), (i), (ii), (iii), (v) and (vi).

Signed:- David Lewis-Roberts 

BARRIE DURKIN
Cynghorydd - Councillor
Aber Falls Hotel
Abergwyngregyn
Llanfairfechan
LL33 0LD

ffon / tel.
symudol / mobile:

Dear, Colleague

I wrote to you on 19th, February, 2010, regarding a house built by the, Director of Legal Services/ Monitoring Of Lynn Ball, not to plan and in breach of a number of fundamental conditions which I first raised with Derrick Jones in 2007, receiving nothing more, than a torrent of abuse and threats in reply.

Since then Lynn Ball, has had every opportunity to abide by those conditions, but deliberately chose not to do so and again raised the issue with Mr, David Bowles before Christmas 2009. For this, although fully vindicated, I have been victimised, persecuted, scandalised and unilaterally sacked from the ruling group because "*Cllr Durkin took a course of action which went against the interest of the group and the county council*"! By Cllr. Clive McGregor, Leader of the Group, and the Council.

This is the very same Councillor who wrote to Derrick Jones, in December 2008 stating, "*It pains me greatly but I am surprised given that the issues surrounding "Craigwen" have eroded whatever trust and confidence there is between the ruling administration and certain members of the Corporate Management team. It may be that a Police Investigation into the issue, as offences of Malfeasance in public Office appear to be made out... It is only then, that confidence in the Isle of Anglesey County Council would be apparent!*"

So what's he done after making such serious allegations? Nothing, absolutely nothing. However, since then, he has attacked the messengers and sold those of us with a passion to clean the council up, down the river, creating the perception that what we are left with is a lawless authority, leaving the wrongdoers to do what they want with impunity.

However, we now see, on behalf of Lynn Ball. "An application submitted retrospectively in order to regularise work which have been carried out without the necessary planning consent at the request of the Planning Authority to be considered at Wednesday's Planning Committee.

This in itself, again vindicates my complaint, **but does not explain why it has taken almost 3 years and yet no complaint from me to get Lynn Ball to do anything about it.** If this is the best example Lynn Ball as the Director of Legal Services/ Monitoring Officer can lead by, it's little wonder that the likes of ex, Councillor, David Lewis-Roberts was being able to corrupt the Planning Committee on a number of occasions, with complete immunity (which he has admitted to) which David bowles wishes me to now report to the police!

The way forward is well underway, but that doesn't mean to achieve the ultimate goal, we must allow those involved in wrongdoing to get away with it, particularly, as we are now engulfed in allegations by members of the public, that senior officers are involved in a fraudulent conspiracy appertaining to Town Improvement Grants and Housing Grants amounting to vast sums of public money.

If this sort of culture of wrongdoing is true then the sooner the Welsh Assembly takes over the running of the Council the better.

Cllr Barrie Durkin

Copy to the Chairperson of the Recovery Board.

Appendix

B

To:- Ombudsman for Wales

P.S.O.W

27 APR 2010

P.S.O.W

26th of April 2010.

From:-
David Lewis-Roberts
28 CRAIG Y DON,
BENLLECH BAY,
ISLE OF ANGLESEY.
LL74 8TB.
Tel.NO. :
E-mail.:-

Dear Sir/Madam.

Ref:- My complaint last week about Councillor Barrie Durkin of The Isle of Anglesey C.C.

Further to my complaint about the above Councillor I enclose his comments (dated) in a Blog by "THE DRUID OF ANGLESEY" (see other enclosed) again about me which are complete lies and made up stories without ANY evidence. Your office has requested evidence from him before during pervious complaints. I believe he did not even reply but kept on complaining of wrongdoing by others without a shred of the evidence that is surely required.

As said before I have NEVER admitted to anything or done ANYTHING wrong so how can I admit to a ANY wrongdoing. Where is there ANY evidence of wrongdoing.

You see that he mentioned buying land which he says is worth £10.000.000, (proof if anything of made up stories, innuendoes and again lies) I wish it was and he can easily buy it for less than a fraction of his value or less as said. That would be a bargain surely. He has bought some land recently in Llanerchymedd as anyone can do without breaching ANY rules, but I ask for what purpose has he bought this land.

His persecution of myself and more importantly my family is ridiculous and is so wrong that something must be done to put a stop to him as this has been going on since the beginning of 2004. You will also note that he claims that he was found NOT GUILTY when he was brought in front of The Standards Committee by yourselves. (Again a complete lie).

Please add this evidence to my original complaint and I would request sight of ANY evidence of wrongdoing by myself.

Yours faithfully.



David Lewis-Roberts

BLOGG OF THE DRUID OF ANGLESEY.



The DRUID

Fighting for
Anglesey

The Druid's Oath



Fulfilling an
ancient oath,
the Druid has
returned to
defend
Anglesey at

Cllr Durkin said...

A comment was made as to whether I was the same Mr Durkin in a Daily Post report appertaining to a complaint to the Ombudsman by, lost his seat at the last election. ex councillor, David Lewis-Robert.

The Ombudsman came to the conclusion after saying "Mr Durkin had a duty as a community representative to draw to attention legitimate concerns" and "that he should do so in a way which does not breach obligations set out in the code of conduct"

That "In my view the language he has chosen (I'd said he was corrupt) is more than colourful, it goes beyond what could be reasonably regarded as the normal currency of political debate and is clearly libellous"

However, in a TV program which he had set up with ITV to try and discredit my good name, on 3.11.08. David Lewis Roberts openly admitted that he'd told lies, and admitted to everything I'd accused him of.

Unfortunately because of the ambience of immunity which still exists, David Lewis Roberts is now through his corrupt activities sitting on some nine acres of land in one of the most prestiges area of natural beauty on Anglesey worth with Planning permission, without laying a brick some, £10,000,000 or so. Who said crime doesn't pay? Now he's taking me to the Ombudsman again over the issue. Roll on adjudication panel, lets get it all out. we might get him in gaol yet.

Good Night all.

Cllr Durkin.

25 April 2010 22:33

Appendix

C

Part 5 Codes and Protocols

5.1 Model Code of Conduct

5.2 Officers' Code of Conduct

5.3 Protocol for Member/Officer Relations

5.4 Bullying and Harassment Policy

5.5 Whistleblowing Policy

5.6 Policy for the Prevention of Fraud and Corruption

5.7 Complaints Procedure

5.1 The Model Code of Conduct

This is the Model Code of Conduct adopted by the County Council on 09.05.2008 in accordance with the draft supplied by the Welsh Assembly Government but it will be renumbered in accordance with the Constitution although the provisions will remain identical.

Part 1 - Interpretation

1. (1) In this code

"co-opted member" ("aelod cyfetholedig"), in relation to a relevant authority, means a person who is not a member of the authority but who —

(a) is a member of any committee or Subcommittee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint Subcommittee of the authority,

and who is entitled to vote on any question which falls to be decided at any meeting of that committee or Subcommittee;

"meeting" ("cyfarfod") means any meeting —

(a) of the relevant authority,

(b) of any executive or board of the relevant authority,

(c) of any committee, Subcommittee, joint committee or joint Subcommittee of the relevant authority or of any such committee, Subcommittee, joint committee or joint Subcommittee of any executive or board of the authority, or

(d) where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990 (1),

(1) S.I. 1990/1553 as amended by S.I. 1991/1389; S.I. 1993/1339; S.I. 1998/1918, and S.I. 1999/500

and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

"member" ("aelod") includes, unless the context requires otherwise, a co-opted member;

"relevant authority" ("awdurdod perthnasol") means—

(a) a county council,

(b) a county borough council,

(c) a community council,

(d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(2) or a scheme to which section 4 of that Act applies,

(2) 2004 c.21

(e) a National Park authority established under section 63 of the Environment Act 1995(3);

(3) 1995 c.25

"you" ("chi") means you as a member or co-opted member of a relevant authority; and

"your authority" ("eich awdurdod") means the relevant authority of which you are a member or co-opted member.

(2) In relation to a community council, references to an authority's monitoring officer and an authority's standards committee are to be read, respectively, as references to the monitoring officer and the standards committee of the county or county borough council which has functions in relation to the community council for which it is responsible under section 56(2) of the Local Government Act 2000.

Part 2 - General Provisions

2. (1) Save where paragraph 3(a) applies, you must observe this code of conduct —
- (a) whenever you conduct the business, or are present at a meeting, of your authority;
 - (b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;
 - (c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or
 - (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.
- (2) You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.
3. Where you are elected, appointed or nominated by your authority to serve —
- (a) on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or
 - (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
4. You must —
- (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
 - (b) show respect and consideration for others;
 - (c) not use bullying behaviour or harass any person, and
 - (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

5. You must not —

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

6. (1) You must —

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty);
- (c) report to the Public Services Ombudsman for Wales and to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
- (d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.

(2) You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

7. You must not —

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority —
 - (i) imprudently;
 - (ii) in breach of your authority's requirements;
 - (iii) unlawfully;

(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;

(v) improperly for political purposes; or

(vi) improperly for private purposes

8. You must —

(a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by —

(i) the authority's head of paid service;

(ii) the authority's chief finance officer;

(iii) the authority's monitoring officer;

(iv) the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);

(b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

9. You must —

(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;

(b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

Part 3 - Interests

Personal Interests

10. (1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

- (2) You must regard yourself as having a personal interest in any business of your authority if —
- (a) it relates to, or is likely to affect —
 - (i) any employment or business carried on by you;
 - (ii) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
 - (iii) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
 - (iv) any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - (v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
 - (vi) any land in which you have a beneficial interest and which is in the area of your authority;
 - (vii) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
 - (viii) any body to which you have been elected, appointed or nominated by your authority;
 - (ix) any —
 - (aa) public authority or body exercising functions of a public nature;
 - (bb) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (cc) body whose principal purposes include the influence of public opinion or policy;
 - (dd) trade union or professional association; or
 - (ee) private club, society or association operating within your authority's area.

- in which you have membership or hold a position of general control or management;
- (x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;
- (b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division; or
- (c) a decision upon it might reasonably be regarded as affecting —
- (i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;
- (ii) any employment or business carried on by persons as described in 10(2)(c)(i);
- (iii) any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;
- (iv) any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (v) any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management,
- to a greater extent than the majority of —
- (aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
- (bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

Disclosure of Personal Interests

11. (1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority and you make —

- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication; or

(b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

(3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.

(4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer from time to time but, as a minimum containing —

(a) details of the personal interest;

(b) details of the business to which the personal interest relates; and

(c) your signature

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.

(6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.

(7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

Prejudicial Interests

12. (1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts

would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business —

(a) relates to —

- (i) another relevant authority of which you are also a member;
- (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- (iii) a body to which you have been elected, appointed or nominated by your authority;
- (iv) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
- (v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to —

- (i) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;
 - (iii) the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;
 - (iv) the functions of your authority in respect of an allowance or payment made under sections 22(5), 24(4) and 173 to 176 of the Local Government Act 1972, an allowance or pension under section 18 of the Local Government and Housing Act 1989 or an allowance or payment under section 100 of the Local Government Act 2000;
- (c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

Overview and Scrutiny Committees

13. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a Subcommittee of such a committee) where —

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, Subcommittees, joint committees or joint Subcommittees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, board, committee, Subcommittee, joint-committee or joint Subcommittee mentioned in sub-paragraph (a) and you were present when that decision was made or action was taken.

Participation in Relation to Disclosed Interests

14. (1) Subject to sub-paragraphs (2), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee —

(a) withdraw from the room, chamber or place where a meeting considering the business is being held —

(i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

(ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.

(2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if —

(a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

(b) you have the benefit of a dispensation provided that you —

(i) state at the meeting that you are relying on the dispensation; and

(ii) before or immediately after the close of the meeting give written notification to your authority containing —

(aa) details of the prejudicial interest;

(bb) details of the business to which the prejudicial interest relates;

(cc) details of, and the date on which, the dispensation was granted; and

(dd) your signature.

(4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

Part 4 - The Register of Members' Interests

Registration of Financial and Other Interests and Memberships and Management Positions

15. (1) Subject to sub-paragraph (3), you must, within 28 days of—

(a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(b) your election or appointment to office (if that is later),

register your financial interests and other interests, where they fall within a category mentioned in paragraph 10(2)(a) in your authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to your authority's monitoring officer.

(2) You must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under sub-paragraph (1), register that new personal interest or change by providing written notification to your authority's monitoring officer.

(3) Sub-paragraphs (1) and (2) do not apply to sensitive information determined in accordance with paragraph 16(1).

(4) Sub-paragraph (1) will not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.

Sensitive information

16. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this code, "sensitive information" ("gwybodaeth sensitif") means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Registration of Gifts and Hospitality

17. You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your authority's monitoring officer of the existence and nature of that gift, hospitality, material benefit or advantage.

Appendix

D

DATGANIAD DERBYN SWYDD
DECLARATION OF ACCEPTANCE OF OFFICE

Yr wyf fi /

I

BARRIE KEVIN DURKIN

a minnau wedi fy ethol i swydd Aelod Cyngor Sir Ynys Môn /
having been elected to the office of Member of Isle of Anglesey County Council

YN DATGAN fy mod yn cymryd amaf fy hun y swydd honno, ac y byddaf yn cyflawni
dyletswyddau'r swydd yn briodol ac yn ffyddlon hyd eithaf fy marn a'm gallu /
DECLARE that I take that office upon myself, and will duly and faithfully fulfil the duties of
it according to the best of my judgement and ability.

YR WYF YN YMRWYMO i barchu'r cōd ymddygiad a ddisgwylir oddi wrth Aelodau Cyngor
Sir Ynys Môn ac sy'n bodoli am y tro ac a allai gael ei adolygu o dro i dro /
I UNDERTAKE to observe the code for the time being as to the conduct which is expected
of Members of Isle of Anglesey County Council and which may be revised from time to
time.

Llofnodwyd /
Signed



Dyddiad /
Date

20/11/2008

Cafodd y datganiad hwn ei wneud a'i lofnodi ger fy mron, /
This declaration was made and signed before me,



SWYDDUG PRIODOL Y CYNGOR / PROPER OFFICER OF THE COUNCIL

Pan wneir y datganiad gerbron person arall a awdurdodwyd gan Adran 83(3) o Ddeddf
Llywodraeth Leol 1972, dylid datgan, yn lle hynny, yn rhinwedd pa swydd y mae'r person
hwnnw'n derbyn y datganiad. /

Where the declaration is made before any other person authorised by Section 83(3) of the
Local Government Act 1972, state instead the capacity in which that person takes the
declaration.

Appendix

E

Our ref: 1179 / 201000146

Ask for: Andrew Walsh

Your ref:

☎ 01656 641152

Date: 3 June 2010

✉ Marilyn.morgan@ombudsman-wales.org.uk

Councillor B Durkin
Aber Falls Hotel
Abergwynnregyn
Llanfairfechan
LL33 0LD

Dear Councillor Durkin

I refer to our letters dated 22 April and 4 May 2010 and write to inform you that the Ombudsman has decided to investigate the complaint against you. He has asked me to conduct the investigation.

I should tell you that the whole of the content of the e-mail supplied by Mr Lewis-Roberts with his complaint will be considered during the investigation. The Ombudsman considers that it appears from the e-mail content there is an inappropriate personal attack on Ms Ball and a more general comment on the actions of senior officers of the Council which potentially may bring the office of member on the authority into disrepute. The content of the posting on The Druid of Anglesey blog which is attributed to you (and which I believe has been forwarded to you) will also form part of the investigation.

The investigation will consider whether your actions were contrary to the following provisions of the Council's Code of Conduct:-

- (1) Paragraph 4(b), 4(c) and 4(d)
- (2) Paragraph 6(i)(a) and 6(i)(d)
- (3) Paragraph 7(a) and 7(b)

The next stage of the investigation will consist of evidence gathering. At the end of this stage we will review the evidence to see if there is a case for you to answer. If we find that there is, all the evidence upon which the

Ombudsman relied to reach that decision will be forwarded to you, before we seek a formal response. Such a response may be either in writing, or an interview or both. At this stage I am not seeking a response from you but you may, if you wish, provide one. However, if you do so please bear in mind that any information or response you provide may appear in a report that the Ombudsman prepares for the Council's Standards Committee or the Adjudication Panel for Wales. This warning applies to the DVD you indicated in our recent telephone conversation you wished to submit to me.

I must also advise you that it would be inappropriate to contact any potential witnesses while the investigation is underway. To do so may expose you to a further complaint that you breached paragraph 7(a) of the Code. I appreciate that a number of potential witnesses are officers of the Council. It is proper that you maintain contact with those officers to enable you to carry out your role as Councillor, but during that contact it would be inadvisable for you to discuss the matters subject of the investigation.

I will contact you again once the evidence gathering phase has been completed. In the meantime, if you require any further information about the process of the investigation, as opposed to its content, please do not hesitate to contact me.

Yours sincerely

Andrew Walsh
Director of Investigations

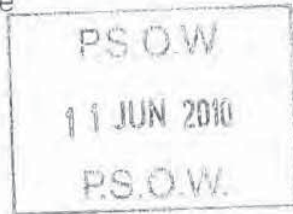
Appendix

F



CYNGOR SIR
YNNYS MÔN
ISLE OF ANGLESEY
COUNTY COUNCIL

Mr Andrew Walsh
Director of Investigations
Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ



8 June, 2010

Dear Mr Walsh

Thank you for your letter of the 3rd June 2010 addressed to the Council's Monitoring Officer, Miss Lynn Ball.

I refer to our telephone conversation on the 4th June 2010 and, as requested, please find enclosed a copy of this Council's Code of Conduct together with signed declaration of acceptance of office by Councillor Durkin (dated 2nd May 2008) and undertaking to observe the code conduct signed by Councillor Durkin on 3rd June 2008.

As mentioned in the telephone conversation, I shall be grateful if the Ombudsman would consider placing this investigation into abeyance as the Council is currently preparing an omnibus complaint against Councillor Durkin in respect of various matters. The matter which is the subject of the complaint by Mr Lewis Roberts will form a part of the omnibus complaint and the Ombudsman may find it more advantageous to deal with all matters together as part of one investigation.

I am coordinating the paperwork, but the complaint is being drafted by external Solicitors, Messrs Weightmans LLP of India Buildings, Water Street, Liverpool, L2 0GA under the supervision of Mr Graeme Creer, local government partner.

Mr Creer is presently drafting a complaint and I anticipate that it will be a few weeks before we are in a position to submit the complaint to you.

As mentioned on the phone I have no objection should you wish to copy this letter to both Councillor Durkin and to Mr Lewis Roberts, if the Ombudsman is agreeable to the suggestion I make above.

Yours sincerely

CC-014116-LB/094159

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 OFFICE

CYNGOR SIR YNYS MÔN /
ISLE OF ANGLESEY COUNTY COUNCIL
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Ein Cyl - Our Ref: RWJ/SR/CC-014116-LB
Eich Cyf - Your Ref: 1179/2001000146